

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

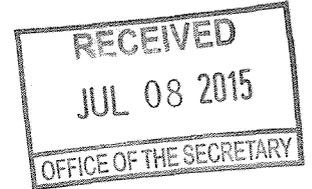
ADMINISTRATIVE PROCEEDING
File No. 3-16483

In the Matter of

CRAIG DANZIG,

Respondent.

JUDGE JASON S. PATIL



DECLARATION OF RICHARD HONG

I, Richard Hong, pursuant to 28 U.S.C. § 1746, declare as follows in support of the Division of Enforcement's Motion for Sanctions:

1. I am an Assistant Chief Litigation Counsel in the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") in Washington, D.C. I am counsel of record in this matter.
2. I am a member of the bars of New York and New Jersey.
3. I make this Declaration in support of the Division's Motion for Sanctions based on my personal knowledge as counsel of record for the Commission in the civil injunctive action entitled *Securities and Exchange Commission v. StratoComm Corporation, et al.*, Civil Action Number 1:11-cv-1188 (the "*StratoComm* Action").
4. On October 4, 2011, the Commission filed a Complaint against Danzig and others in the *StratoComm* Action. The Commission's Complaint is docket entry ("ECF No.") 1 on the District Court's docket report. A true and correct copy of the docket report from the *StratoComm* Action is attached hereto as Hong Decl. Exhibit 1.

5. On February 6, 2012, Danzig filed an Answer to the Complaint and Affirmative Defenses (ECF No. 8). Hong Decl. Ex. 1 at 4; *see also* MSJ Ex. No. 10 below.

6. On April 4, 2013, the Commission filed its Statement of Material Facts in Support of the Securities and Exchange Commission's Motion for Partial Summary Judgment (ECF No. 25-2). A true and correct copy of the Statement is attached hereto as Hong Decl. Exhibit 2.

7. In support of the Commission's Motion for Partial Summary Judgment, the following exhibits also were filed:

- MSJ Ex. 6: Excerpts of Investigative Testimony of Craig Danzig;
- MSJ Ex. 10: Danzig's Answer;
- MSJ Ex. 26: March 11, 2010 Danzig e-mail (from his [REDACTED] email address); and
- MSJ Ex. 32: October 31, 2009 Danzig e-mail from his [REDACTED] email address) to co-defendant Roger Shearer of StratoComm.

A true and correct copy of each of these exhibits (MSJ Ex. 6, MSJ Ex. 10, MSJ Ex. 26, and MSJ Ex. 32) is attached to Hong Decl. Exhibit 2.

8. On February 19, 2014, the District Court entered a Decision & Order granting the Commission's motion for partial summary judgment with respect to liability (the "Summary Judgment Decision") (ECF No. 61). Hong Decl. Ex. 1 at 11. A true and correct copy of the Summary Judgment Decision is attached hereto as Hong Decl. Exhibit 3.

9. In the Summary Judgment Decision, the District Court found that Danzig violated Sections 5(a) and (c) and 17(a) of the Securities Act of 1933 (the "Securities Act"), aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act")

and Rule 10b-5 thereunder and violated Section 15(a) of the Exchange Act. Hong Decl. Ex. 3 at 29-36.

10. On March 9, 2015, the District Court entered a Decision & Order granting in part and denying in part the Commission's motion for remedies (the "Remedies Decision") (ECF No. 76). Ex 1 at 13. A true and correct copy of the Remedies Decision is attached hereto as Hong Decl. Exhibit 4.

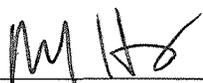
11. On March 26, 2015, the District Court entered an Amended Final Judgment as to Defendants StratoComm Corporation, Roger D. Shearer and Craig Danzig (the "Amended Final Judgment") (ECF No. 80). With respect to Danzig, the Amended Final Judgment:

- a. permanently enjoins Danzig from future violations of Sections 5(a) and (c) and 17(a) of the Securities Act and Sections 15(a)(1) and 10(b) of the Exchange Act and Rule 10b-5 thereunder, *id.* at 1-4;
- b. orders Danzig to pay a civil penalty in the amount of \$25,000, *id.* at 6; and
- c. permanently bars Danzig from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock, *id.* at 4.

A true and correct copy of the Amended Final Judgment is attached hereto as Hong Decl. Exhibit 5.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 6, 2015
Washington, D.C.



Richard Hong

APPEAL,CLOSED,PRO SE

U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 6.1] (Albany)
CIVIL DOCKET FOR CASE #: 1:11-cv-01188-TJM-CFH

Securities and Exchange Commission v. Stratocomm
Corporation et al
Assigned to: Senior Judge Thomas J. McAvoy
Referred to: Magistrate Judge Christian F. Hummel
Case in other court: 2nd Circuit, 14-01259
Cause: 15:77 Securities Fraud

Date Filed: 10/04/2011
Date Terminated: 03/11/2015
Jury Demand: Defendant
Nature of Suit: 850
Securities/Commodities
Jurisdiction: U.S. Government Plaintiff

Plaintiff**Securities and Exchange Commission**

represented by

Herbert M. Semler

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ATTORNEY TO BE NOTICED

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TERMINATED: 04/30/2013

Richard Hong

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Commission - DC Office
100 F Street NE
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ATTORNEY TO BE NOTICED

V.

Defendant**EXHIBIT**

FILED
File No. 3-16483
Hong Decl. Ex. 1

Stratocomm Corporation

represented by **Benjamin W. Hill**
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TERMINATED: 07/11/2013
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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Email: bessetca@esjlaw.com
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Giovanna A. D'Orazio
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Email: gad@doraziopeterson.com
ATTORNEY TO BE NOTICED

James C. Knox
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 518-274-5820
 Email: jknox@joneshacker.com
 TERMINATED: 01/28/2013

Defendant

Roger D. Shearer

represented by **E. Stewart Jones , Jr.**
 (See above for address)
 LEAD ATTORNEY
 ATTORNEY TO BE NOTICED

Benjamin W. Hill
 (See above for address)
 TERMINATED: 01/28/2013

James C. Knox
 (See above for address)
 ATTORNEY TO BE NOTICED

William J. Dreyer
 (See above for address)
 TERMINATED: 01/28/2013

Defendant

Craig Danzig

represented by **Craig Danzig**

 Boca Raton, FL 
 PRO SE

Myles H. Malman
 Malman, Malman & Rosenthal
 3107 Stirling Road, Suite 101
 Fort Lauderdale, FL 33312
 954-322-0065
 Fax: 954-322-0064
 Email: myles@malman.com
 TERMINATED: 05/25/2012
 LEAD ATTORNEY

Date Filed	#	Docket Text
10/04/2011	<u>1</u>	COMPLAINT against Craig Danzig, Roger D. Shearer and Stratocomm Corporation filed by Securities and Exchange Commission. (Attachments: # <u>1</u> Civil Cover Sheet) (dpk) (Entered: 10/05/2011)
10/05/2011	<u>2</u>	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 3/6/2012 at 9:30

		AM in Albany before Magistrate Judge David R. Homer. Civil Case Management Plan due by 2/21/2012. (dpk) (Entered: 10/05/2011)
10/05/2011	<u>3</u>	Summons Issued as to Craig Danzig, Roger D. Shearer and Stratocomm Corporation. (Attachments: # <u>1</u> Summons Issued as to Roger Shearer, # <u>2</u> Summons Issued as to Craig Danzig) (dpk) (Entered: 10/05/2011)
11/18/2011	<u>4</u>	NOTICE by Securities and Exchange Commission <i>Of Filing Of Waivers Of Service Of Summons</i> (Attachments: # <u>1</u> Exhibit(s) Attachment A -- Waiver by StratoComm Corp, # <u>2</u> Exhibit(s) Attachment B -- Waiver by Roger Shearer) (Semler, Herbert) (Entered: 11/18/2011)
12/14/2011	<u>5</u>	NOTICE by Securities and Exchange Commission <i>Of Filing of Waiver of Service of Summons</i> (Attachments: # <u>1</u> Exhibit(s) Attachment A -- Danzig Waiver of Service of Summons)(Semler, Herbert) (Entered: 12/14/2011)
01/17/2012	<u>6</u>	ANSWER to <u>1</u> Complaint by Roger Shearer and Stratocomm Corporation. (Jones, E.) Modified on 1/18/2012 to add Roger Shearer as filer. (amt) (Entered: 01/17/2012)
02/06/2012	<u>7</u>	NOTICE of Appearance by Myles H. Malman on behalf of Craig Danzig (Malman, Myles) (Entered: 02/06/2012)
02/06/2012	<u>8</u>	ANSWER to <u>1</u> Complaint <i>and Affirmative Defenses</i> by Craig Danzig.(Malman, Myles) (Entered: 02/06/2012)
02/17/2012		TEXT NOTICE. The Rule 16 Conference with Magistrate Judge David R. Homer set for March 6, 2012 at 9:30 a.m. will be held by TELEPHONE. Please use the court's DIAL-IN # 1-888-684-8852 ACCESS CODE 4750370 SECURITY CODE 1234. (lah,) (Entered: 02/17/2012)
02/21/2012	<u>9</u>	CIVIL CASE MANAGEMENT PLAN by Securities and Exchange Commission. (Semler, Herbert) (Entered: 02/21/2012)
03/06/2012		Minute Entry for proceedings held before Magistrate Judge David R. Homer. A Rule 16 Conference was held on 3/6/2012 with Michael Semler and Sara Allegain for plaintiff, Stewart Jones for defendant Stratocomm, and Myles Malman for defendant Danzig. Pretrial deadlines were discussed. A further telephone conference will be held on 4/5/2012 at 9:30 a.m. A schedule for the progression of the case will be issued after that conference is held. (lah,) (Entered: 03/08/2012)
03/08/2012		TEXT NOTICE. A Telephone Status Conference will be held on APRIL 5, 2012 at 9:30 AM with Magistrate Judge David R. Homer. Please use the court's DIAL IN # 1 888-684-8852 ACCESS CODE 4750370 SECURITY CODE 1234. (Entered: 03/08/2012)
04/05/2012		Minute Entry for proceedings held before Magistrate Judge David R. Homer. A telephone conference was held on 4/5/2012 with Michael Semlar and Sara Allegain for plaintiffs and E. Stewart Jones for defendant Stratocomm. The attorneys confirmed that no settlement is possible at this time and a scheduling order will be entered for the progression of the case. (lah,) (Entered: 04/09/2012)

04/09/2012	<u>10</u>	UNIFORM PRETRIAL SCHEDULING ORDER: Anticipated length of trial: 7 Days. Preferred Trial Location: Albany, NY. Joinder of Parties due by 5/15/2012. Amended Pleadings due by 5/15/2012. Rule 26(a)(1) Mandatory Disclosures must be within 14 days of the date of this Order. Initial written discovery demands must be served by 4/20/2012. Discovery due by 2/4/2013. Motions to be filed by 4/4/2013. Trial Ready Deadline is 5/1/2013. Jury Trial set for 9/10/2013 at 10:00 AM in Albany, NY before Senior Judge Thomas J. McAvoy. Signed by Magistrate Judge David R. Homer on 4/9/2012. (mab) (Entered: 04/09/2012)
04/12/2012	<u>11</u>	AMENDED UNIFORM PRETRIAL SCHEDULING ORDER: Anticipated length of trial: 7 Days. Preferred Trial Location: Albany, NY. Joinder of Parties due by 5/15/2012. Amended Pleadings due by 5/15/2012. Rule 26(a)(1) Mandatory Disclosures must be within 14 days of the date of this Order. Discovery due by 2/4/2013. Motions to be filed by 4/4/2013. Trial Ready Deadline is 5/1/2013. Jury Trial set for 9/10/2013 at 10:00 AM in Albany, NY before Senior Judge Thomas J. McAvoy. Signed by Magistrate Judge David R. Homer on 4/12/2012. (mab) (Entered: 04/12/2012)
05/01/2012	<u>12</u>	Letter Motion by Myles H. Malman requesting to withdraw as counsel for defendant Craig Danzig and to stay proceedings until new counsel has appeared submitted to Magistrate Judge David R. Homer. (mab) (Entered: 05/01/2012)
05/02/2012		TEXT ORDER Re <u>12</u> Letter Motion from counsel for defendant Craig Danzig seeking leave to withdraw as counsel. Counsel is GRANTED LEAVE to file a motion to withdraw as counsel pursuant to N.D.N.Y.L.R. 7.1(b)(2). Signed by Magistrate Judge David R. Homer on 5/2/2012. (lah,) (Entered: 05/02/2012)
05/04/2012	<u>13</u>	MOTION to Withdraw as Attorney for Defendant Craig Danzig Motion Hearing set for 6/21/2012 09:30 AM in Albany before Magistrate Judge David R. Homer Response to Motion due by 6/4/2012 filed by Craig Danzig. (Attachments: # <u>1</u> Affirmation of Myles H. Malman, # <u>2</u> Notice of Motion) Motions referred to David R. Homer. (Malman, Myles) (Entered: 05/04/2012)
05/07/2012	<u>14</u>	ORDER TO SHOW CAUSE. IT IS HEREBY ORDERED that a hearing on the <u>13</u> MOTION to Withdraw as Counsel for Defendant Craig Danzig will be held on 5/23/2012 at 9:30 AM in Courtroom No. 3, James T. Foley U.S. Courthouse, 445 Broadway, Albany, NY before Magistrate Judge David R. Homer. IT IS FURTHER ORDERED that counsel for Craig Danzig and Craig Danzig personally must both personally appear for the conference. IT IS FURTHER ORDERED that any attorney and Craig Danzig may appear for the conference by telephone at their request and, if so requested, counsel and Mr. Danzig shall so notify the chambers of the undersigned on or before 5/16/2012. IT IS FURTHER ORDERED that counsel for Craig Danzig shall serve a copy of this order upon Mr. Danzig by regular and electronic mail no later than 5/11/2012 and on or before 5/18/2012, counsel for Craig Danzig shall file in the docket of this case an affidavit of service as to such service. Signed by Magistrate Judge David R. Homer on 5/7/2012. (mab) (Entered: 05/07/2012)
05/07/2012	<u>15</u>	AFFIDAVIT of Service for D.E. 14 - Order to Show Cause served on Craig Danzig on May 7, 2012, filed by Craig Danzig. (Attachments: # <u>1</u> Exhibit(s) D.E. 14 - Order to Show Cause)(Malman, Myles) (Entered: 05/07/2012)

05/17/2012		TEXT NOTICE. A hearing is set for 5/23/2012 at 9:30 AM with Magistrate Judge Homer regarding counsel for defendant Craig Danzig's motion to withdraw as counsel. For all those appearing by telephone, please use the court's DIAL-IN # 1-888-684-8852 ACCESS CODE 4750370 SECURITY CODE 1234. (lah,) (Entered: 05/17/2012)
05/23/2012		Minute Entry for proceedings held re <u>13</u> with Magistrate Judge David R. Homer: Motion Hearing was held on 5/23/2012 re MOTION to Withdraw as Attorney for Defendant Craig Danzig. Danzig. Counsel for all parties appeared by telephone. Defendant Danzig failed to appear. At the conclusion of the hearing, the motion of Danzig's counsel to withdraw was granted. Defendant Danzig will appear pro se unless and until new counsel files a notice of appearance. A written order will be entered. (Court Reporter Bonnie Buckley) (FTR CRD Cindy Mezoff) (lah,) (Entered: 05/24/2012)
05/25/2012	<u>16</u>	ORDER regarding <u>13</u> Motion to Withdraw as Attorney for Defendant Craig Danzig. IT IS HEREBY ORDERED that 1) The motion of Danzig's counsel to withdraw from his representation of Danzig is GRANTED and counsel is relieved of his obligations to represent Danzig forthwith; 2) Unless and until new counsel formally files a Notice of Appearance on behalf of Danzig, Danzig must proceed representing himself in this matter and the docket of this case shall be amended to reflect the contact information set forth in this Order; 3) The request of Danzig's counsel to stay further proceedings in this action to permit Danzig to retain new counsel is DENIED without prejudice to renewal either by Danzig or his new counsel, and the case shall proceed according to the schedule previously entered in this case. Signed by Magistrate Judge David R. Homer on 5/24/2012. (mab) (Entered: 05/25/2012)
09/04/2012	<u>17</u>	ORDER REASSIGNING CASE. Case reassigned to Magistrate Judge Christian F. Hummel for all further proceedings. Magistrate Judge David R. Homer no longer assigned to case. Signed by Chief Judge Gary L. Sharpe on 9/4/2012. (dpk) (Entered: 09/04/2012)
09/18/2012	<u>18</u>	NOTICE of Appearance by Richard Hong on behalf of Securities and Exchange Commission (Hong, Richard) (Entered: 09/18/2012)
10/09/2012	<u>19</u>	Mail Returned as Undeliverable re: <u>17</u> Order Reassigning Case sent to Craig Danzig. Address sent to: [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 10/12/2012)
01/23/2013	<u>20</u>	NOTICE of Appearance by Jane M. Peterson on behalf of Securities and Exchange Commission (Peterson, Jane) (Entered: 01/23/2013)
01/24/2013	<u>21</u>	NOTICE of Appearance by James C. Knox on behalf of Roger D. Shearer, Stratocomm Corporation (Knox, James) (Entered: 01/24/2013)
01/25/2013	<u>22</u>	STIPULATION <i>Requesting Consent Order Granting Substitution of Attorney</i> by Roger D. Shearer, Stratocomm Corporation submitted to Judge Hummel. (Hill, Benjamin) (Entered: 01/25/2013)
01/28/2013	<u>23</u>	ORDER re <u>22</u> Stipulation filed by Roger D. Shearer and Stratocomm Corporation. Signed by Magistrate Judge Christian F. Hummel Modified on 2/6/2013 (cbm,). (Entered: 01/29/2013)

04/01/2013	<u>24</u>	PRETRIAL DISCLOSURE STATEMENT by Securities and Exchange Commission. (Attachments: # <u>1</u> Witness List, # <u>2</u> Defendant StratoComm Designations, # <u>3</u> Defendants Shearer and StratoComm Designations, # <u>4</u> Defendant Danzig Designations, # <u>5</u> Exhibit List)(Peterson, Jane) (Entered: 04/01/2013)
04/04/2013	<u>25</u>	MOTION for Summary Judgment filed by Securities and Exchange Commission. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Statement of Material Facts, # <u>3</u> Declaration, # <u>4</u> Exhibit(s), # <u>5</u> Exhibit(s), # <u>6</u> Exhibit(s), # <u>7</u> Exhibit(s), # <u>8</u> Exhibit(s), # <u>9</u> Exhibit(s), # <u>10</u> Exhibit(s), # <u>11</u> Exhibit(s), # <u>12</u> Exhibit(s), # <u>13</u> Exhibit(s), # <u>14</u> Exhibit(s), # <u>15</u> Exhibit(s), # <u>16</u> Exhibit(s), # <u>17</u> Exhibit(s), # <u>18</u> Exhibit(s), # <u>19</u> Exhibit(s), # <u>20</u> Exhibit(s), # <u>21</u> Exhibit(s), # <u>22</u> Exhibit(s), # <u>23</u> Exhibit(s), # <u>24</u> Exhibit(s), # <u>25</u> Exhibit(s), # <u>26</u> Exhibit(s), # <u>27</u> Exhibit(s), # <u>28</u> Exhibit(s), # <u>29</u> Exhibit(s), # <u>30</u> Exhibit(s), # <u>31</u> Exhibit(s), # <u>32</u> Exhibit(s), # <u>33</u> Exhibit(s), # <u>34</u> Exhibit(s), # <u>35</u> Exhibit(s), # <u>36</u> Exhibit(s), # <u>37</u> Appendix of Unpublished Cases) (Peterson, Jane) (Entered: 04/04/2013)
04/10/2013		TEXT NOTICE of Hearing on Motion re <u>25</u> MOTION for Summary Judgment : Response to Motion due by 4/26/2013. Reply to Response to Motion due by 5/2/2013. Motion Hearing set for 5/13/2013 at 10:00 AM in Albany before Senior Judge Thomas J. McAvoy. (dpk) (Entered: 04/10/2013)
04/15/2013	<u>26</u>	NOTICE by Securities and Exchange Commission <i>Objection To Defendants' Pretrial Disclosures</i> (Semler, Herbert) (Entered: 04/15/2013)
04/17/2013	<u>27</u>	Letter Motion from Benjamin W. Hill, Esq. and James C. Knox, Esq. for Roger D. Shearer, Stratocomm Corporation requesting exention of time to file disclosures submitted to Judge Thomas J. McAvoy . (Hill, Benjamin) (Entered: 04/17/2013)
04/18/2013	<u>28</u>	RESPONSE in Opposition re <u>27</u> Letter Motion from Benjamin W. Hill, Esq. and James C. Knox, Esq. for Roger D. Shearer, Stratocomm Corporation requesting exention of time to file disclosures submitted to Judge Thomas J. McAvoy filed by Securities and Exchange Commission. (Peterson, Jane) (Entered: 04/18/2013)
04/22/2013	<u>29</u>	TEXT ORDER Pre-trial submissions shall be filed within seven days of the decision on the pending motion for summary judgment. Authorized by Senior Judge Thomas J. McAvoy on 4/22/13. [Served by mail.] (sfp,) (Entered: 04/22/2013)
04/23/2013	<u>30</u>	Letter Motion from William J. Dreyer, Esq. for Stratocomm Corporation requesting adjournment of the return date on the Motion for Summary Judgment submitted to Judge McAvoy . (Dreyer, William) (Entered: 04/23/2013)
04/24/2013	<u>31</u>	TEXT ORDER: The pending <u>25</u> MOTION for Summary Judgment shall be adjourned to the Court's 6/28/2013 motion calendar at 10:00 AM in Binghamton. Opposition papers and reply papers, if any, shall be filed using the 6/28/2013 return date and in accordance with the Court's local rules. The Court is unlikely to grant any further extensions of time. (Response to Motion due by 6/11/2013; Reply to Response to Motion due by 6/17/2013). Authorized by

		Senior Judge Thomas J. McAvoy on 4/24/2013. (amt) [Def't Danzig served via reg. mail] (Entered: 04/24/2013)
04/26/2013		Reset Deadlines as to <u>25</u> MOTION for Summary Judgment. Response to Motion due by 6/11/2013. Reply to Response to Motion due by 6/17/2013. Motion Hearing set for 6/28/2013 at 10:00 AM in Binghamton before Senior Judge Thomas J. McAvoy. (sfp,) (Entered: 04/26/2013)
04/29/2013	<u>33</u>	Mail Returned as Undeliverable re: Text Notice of Hearing on Motion filed on 4/10/2013 sent to Craig Danzig. Address sent to: [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 04/30/2013)
04/30/2013	<u>32</u>	NOTICE by Securities and Exchange Commission of the <i>Withdrawal of Jane M.E. Peterson as Counsel</i> (Peterson, Jane) (Entered: 04/30/2013)
05/06/2013	<u>34</u>	Mail Returned as Undeliverable. re: 31 Order on Letter Request,, sent to Craig Danzig Address sent to [REDACTED] Boca Raton, FL [REDACTED] (wbl,) (Entered: 05/08/2013)
05/14/2013	<u>35</u>	Mail Returned as Undeliverable re: 29 Order on Letter Request sent to Craig Danzig. Address sent to [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 05/14/2013)
05/16/2013	<u>36</u>	<i>Unopposed</i> Letter Motion from Plaintiff SEC for Securities and Exchange Commission requesting Change in Hearing Date submitted to Judge McAvoy . (Hong, Richard) (Entered: 05/16/2013)
05/16/2013	<u>37</u>	Letter Motion from William J. Dreyer, Esq. for Stratocomm Corporation requesting conference submitted to Judge Treece . (Dreyer, William) (Entered: 05/16/2013)
05/16/2013	<u>38</u>	Letter Motion from William J. Dreyer, Esq. for Stratocomm Corporation requesting conference submitted to Judge Hummel . (Dreyer, William) (Entered: 05/16/2013)
05/20/2013	39	TEXT ONLY ORDER GRANTING pltf's <u>36</u> Letter Request & resetting Pltf's <u>25</u> MOTION for Summary Judgment to SPECIAL MOTION TERM on 7/09/2013 at 10:00 AM in ALBANY, NY bef Sr. District Judge Thomas J. McAvoy. Opposition Response to Motion due by 6/21/2013; and, Reply Response to Motion due by 6/28/2013; Authorized on 5/20/2013 by Sr. District Judge Thomas J. McAvoy (cml) (Entered: 05/20/2013)
05/20/2013		TEXT ONLY NOTICE resetting PLTF'S <u>25</u> MOTION for Summary Judgment to SPECIAL MOTION TERM on 7/09/2013 at 10:00 AM in ALBANY, NY bef Sr. District Judge Thomas J. McAvoy; and, resetting OPPOSITION RESPONSE to Motion due by 6/21/2013; and, resetting REPLY RESPONSE to Motion due by 6/28/2013 (cml) (Entered: 05/20/2013)
05/20/2013	<u>40</u>	Minute Entry: SPECIAL MOTION CALENDAR held 5/20/2013 bef Sr. District Judge Thomas J. McAvoy in Albany, NY re: Pltf's <u>25</u> MOTION for Summary Judgment - ADJOURNED until 7/09/13 in Albany. (cml) (Entered: 05/22/2013)
06/12/2013	41	TEXT ORDER granting <u>38</u> Letter Request Setting a Telephone Conference set

		for 6/13/2013 09:00 AM in Albany before Magistrate Judge Christian F. Hummel. Signed by Magistrate Judge Christian F. Hummel on 6/12/13. (cjm,) (Entered: 06/12/2013)
06/13/2013		Text Minute Entry (FTR recorded 9:10 am - 9:30 am) for proceedings held before Magistrate Judge Christian F. Hummel: Telephone Conference held on 6/13/2013 regarding docket # 38 requesting permission for Dreyer Boyajian to be relieved as counsel. Appearances: Ben Hill, Esq., James Knox, Esq., Richard Hong, Esq., Roger Shearer, defendant. Richard Hong expresses concern over the case being delayed due to representation issue. Richard Hong advises court that he forwarded notice of today's conference to Mr. Danzig. Mr. Shearer is questioned as to his understanding of the withdrawal of Dreyer Boyajian who represents Stratocomm Corp. Judge Hummel sets a motion schedule for Dreyer Boyajian to be removed as counsel. SEC opposes any further extensions. Motion to withdraw as counsel to be filed by 6/17/13. Any response by Roger Shearer to Motion to withdraw as counsel is due by 6/27/13. Mr. Shearer is advised that a copy of any response goes to the court & Dreyer firm, however, it is not necessary to provide a copy to SEC due to the confidential nature of the proceedings. A letter will go out from Dreyer, Boyajian to Judge McAvoy's chambers indicating they are making the application and requesting extension. Dreyer, Boyajian continues to represent Stratocomm until a decision is made on the papers. (CRD: Cindy Mezooff/Court Reporter Theresa Casal) (cjm,) (Entered: 06/13/2013)
06/13/2013	<u>42</u>	Letter Motion from William J. Dreyer for Stratocomm Corporation requesting an extension of the scheduling order and for a 7.1 Conference submitted to Judge McAvoy . (Dreyer, William) (Entered: 06/13/2013)
06/14/2013	<u>43</u>	ORDER. ORDERED that the attorneys for defendant StratoComm Corporation shall file and serve their motion to withdraw as counsel under seal by 6/17/2013. StratoComm Corporation will file answering papers under seal by 6/27/2013. The Court docket will reflect that date on which such papers are filed with the Court. (Motions terminated: <u>37</u> Letter Motion from William J. Dreyer, Esq. for Stratocomm Corporation requesting conference submitted to Judge Treece) Signed by Magistrate Judge Christian F. Hummel on 6/14/2013. (dpk) (Entered: 06/14/2013)
06/14/2013	<u>44</u>	RESPONSE in Opposition re <u>42</u> Letter Motion from William J. Dreyer for Stratocomm Corporation requesting an extension of the scheduling order and for a 7.1 Conference submitted to Judge McAvoy (<i>Plaintiff SEC's Opposition to StratoComm's Second Request for Adjournment</i>) filed by Securities and Exchange Commission. (Hong, Richard) (Entered: 06/14/2013)
06/17/2013	45	TEXT ONLY ORDER granting in part Defense <u>42</u> Letter Request. Pltfs' <u>25</u> MOTION for Summary Judgment shall be adjourned until 8/13/13 motion calendar in Albany, NY. THIS IS THE FINAL ADJOURNMENT; Authorized on 6/17/13 by Sr. District Judge Thomas J. McAvoy (cml) (Entered: 06/17/2013)
06/17/2013		TEXT ONLY NOTICE of MOTION HEARING resetting PLTFS' <u>25</u> MOTION for Summary Judgment now returnable on 8/13/2013 at 10:00 AM in ALBANY, NY bef Sr. District Judge Thomas J. McAvoy; and, resetting

		DEFENSE RESPONSE to Motion due by 7/26/2013; and, resetting PLTFS' Reply Response to Motion due by 8/02/2013. (cml) (Entered: 06/17/2013)
06/17/2013	46	***SEALED DOCUMENT by Stratocomm Corporation. Document maintained in the Albany Office of the Clerk. (dpk) (Entered: 06/20/2013)
06/28/2013		Minute Entry: MOTION CALENDAR held 6/28/2013 bef Sr. District Judge Thomas J. McAvoy in Binghamton, NY: APP/CR/CRD: None. Pltf's <u>25</u> MOTION for Summary Judgment - ADJOURNED until 8/13/13 in Albany. (cml) (Entered: 06/28/2013)
07/09/2013	<u>47</u>	Mail Returned as Undeliverable re: <u>43</u> Order sent to Craig Danzig. Address sent to [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 07/09/2013)
07/09/2013		Minute Entry: SPECIAL MOTION CALENDAR held 7/09/2013 bef Sr. District Judge Thomas J. McAvoy in Albany, NY re: Pltf's <u>25</u> MOTION for Summary Judgment - ADJOURNED until 8/13/13 in Albany. (cml) (Entered: 07/09/2013)
07/11/2013	<u>48</u>	ORDER re 46 Sealed Motion to Withdraw as Counsel. The motion of the law firm Dreyer Boyajian LLP to withdraw as counsel is GRANTED. Attorney William J. Dreyer and Benjamin W. Hill terminated. Signed by Magistrate Judge Christian F. Hummel on 7/11/2013. (dpk) (Entered: 07/11/2013)
07/26/2013	<u>49</u>	NOTICE of Appearance by Scott M. Peterson on behalf of Stratocomm Corporation (Peterson, Scott) (Entered: 07/26/2013)
07/26/2013	<u>50</u>	Letter Motion from Scott M. Peterson for Stratocomm Corporation requesting Extension to file opposition submitted to Judge McAvoy . (Peterson, Scott) (Entered: 07/26/2013)
07/26/2013	51	TEXT ORDER granting <u>50</u> Letter Request. Pltf's <u>25</u> Motion for Summary Judgment is adjourned to the Court's 9/9/13 motion calendar at 10 AM in Albany. Opposition papers shall be filed on or before 8/23/13. Reply papers, if any, shall be filed on or before 8/29/13. NO FURTHER EXTENSIONS OR ADJOURNMENTS WILL BE PERMITTED. Authorized by Senior Judge Thomas J. McAvoy on 7/26/13. [Served by mail.] (sfp,) (Entered: 07/26/2013)
07/26/2013		Reset Motion Deadlines: Pltf's <u>25</u> MOTION for Summary Judgment is adjourned to Senior Judge Thomas J. McAvoy's 9/9/13 motion calendar at 10 AM in Albany. Response to Motion due by 8/23/2013. Reply, if any, to Response to Motion due by 8/29/2013. This entry is made to set the deadlines in the system. (sfp,) (Entered: 07/26/2013)
07/29/2013	<u>52</u>	Letter Motion from Richard Hong for Securities and Exchange Commission requesting Clarification of the Court's July 26, 2013 Text Order Re Scheduling submitted to Judge McAvoy . (Hong, Richard) (Entered: 07/29/2013)
07/30/2013		TEXT ONLY NOTICE advising parties that the 9/10/13 JURY TRIAL has been ADJOURNED w/out DATE bef Sr. Judge McAvoy until such time a decision has been rendered on the dispositive motion(s) presently pending before the Court. Trial Papers are SUSPENDED at this time. (cml) [CRD traditionally served text only notice upon non-NEF deft Danzig @ last known address] (Entered: 07/30/2013)

08/06/2013	<u>53</u>	Mail Returned as Undeliverable re: 51 Order on Letter Request. Mail sent to Craig Danzig. Address sent to [REDACTED] Boca Rato, FL [REDACTED] (dpk) (Entered: 08/07/2013)
08/12/2013	<u>54</u>	Mail Returned as Undeliverable re: Text Only Notice sent to Craig Danzig Address sent to [REDACTED] Boca Raton, FL (dpk) (Entered: 08/13/2013)
08/13/2013		Minute Entry: SPECIAL MOTION CALENDAR held 8/13/2013 bef Sr. District Judge Thomas J. McAvoy in Albany, NY: APP: None; CR: L. Tennyson; CRD/mp. Pltf's <u>25</u> MOTION for Summary Judgment - ADJOURNED until 9/09/13 in Albany. (cml) (Entered: 08/13/2013)
08/23/2013	<u>55</u>	RESPONSE in Opposition re <u>25</u> MOTION for Summary Judgment <i>Declaration of James C. Knox</i> filed by Roger D. Shearer. (Attachments: # <u>1</u> Statement of Material Facts, # <u>2</u> Memorandum of Law, # <u>3</u> Certificate of Service)(Knox, James) (Entered: 08/23/2013)
08/23/2013	<u>56</u>	NOTICE of Appearance by Giovanna A. D'Orazio on behalf of Stratocomm Corporation (D'Orazio, Giovanna) (Entered: 08/23/2013)
08/23/2013	<u>57</u>	RESPONSE in Opposition re <u>25</u> MOTION for Summary Judgment filed by Stratocomm Corporation. (Attachments: # <u>1</u> Statement of Material Facts, # <u>2</u> Memorandum of Law, # <u>3</u> Appendix)(D'Orazio, Giovanna) (Entered: 08/23/2013)
08/23/2013	<u>58</u>	CERTIFICATE OF SERVICE by Stratocomm Corporation of <i>Opposition to Motion for Summary Judgment</i> (D'Orazio, Giovanna) (Entered: 08/23/2013)
08/29/2013	<u>59</u>	RESPONSE in Support re <u>25</u> MOTION for Summary Judgment <i>Reply Brief</i> filed by Securities and Exchange Commission. (Attachments: # <u>1</u> Exhibit(s) MSJ Ex. 2, # <u>2</u> Exhibit(s) MSJ Ex. 8A, # <u>3</u> Exhibit(s) MSJ Ex. 14A, # <u>4</u> Exhibit (s) MSJ Ex. 16, # <u>5</u> Exhibit(s) MSJ Ex. 19, # <u>6</u> Exhibit(s) MSJ Ex. 34, # <u>7</u> Exhibit(s) MSJ Ex. 35, # <u>8</u> Statement of Material Facts Response and Objections to StratoComm's Additional Facts)(Hong, Richard) (Entered: 08/29/2013)
09/03/2013		COURT'S TEXT NOTICE to parties advising that the pending motion for 9/9/13 is on submit basis, no appearances necessary. [Served by mail.] (sfp,) (Entered: 09/03/2013)
09/09/2013		Minute Entry: MOTION CALENDAR held 9/09/2013 bef Sr. District Judge Thomas J. McAvoy in Albany, NY: APP: None; CR: T. Casal; CRD/sg. Pltf's <u>25</u> MOTION for Summary Judgment - TAKEN ON SUBMIT. (cml) (Entered: 09/10/2013)
09/13/2013	<u>60</u>	Mail Returned as Undeliverable: Copy of the Court's 9/3/2013 Text Notice sent to Craig Danzig, Address sent to Boca Raton, FL (amt) (Entered: 09/16/2013)
02/19/2014	<u>61</u>	DECISION AND ORDER granting <u>25</u> Motion for Summary Judgment. The SEC's motion for partial summary judgment imposing liability on defendants on each claim in which the defendants are named is GRANTED. The parties may now present evidence to the Court, by way of separate motion and/or proceeding, regarding appropriate relief to be awarded. Signed by Senior Judge

		Thomas J. McAvoy on 2/19/2014. [Mailed copy of decision and order to pro se defendant] (dpk) (Entered: 02/20/2014)
04/07/2014	<u>62</u>	MOTION for Remedies Motion Hearing set for 5/12/2014 10:00 AM in Albany before Senior Judge Thomas J. McAvoy Response to Motion due by 4/25/2014 filed by Securities and Exchange Commission. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Exhibit(s) 1 (SEC Prior Cease-and-Desist Order), # <u>3</u> Exhibit(s) 2 (Answer of StratoComm and Shearer), # <u>4</u> Exhibit(s) 3 (FINRA BrokerCheck for Danzig), # <u>5</u> Exhibit(s) 4 (Declaration of Brad Mroski), # <u>6</u> Proposed Order/Judgment) Motions referred to Christian F. Hummel. (Hong, Richard) (Entered: 04/07/2014)
04/18/2014	<u>63</u>	NOTICE OF APPEAL as to <u>61</u> Order on Motion for Summary Judgment, <i>with Certificate of Service</i> , by Roger D. Shearer. Filing fee \$ 505, receipt number 0206-2911408. (Knox, James) (Entered: 04/18/2014)
04/18/2014	<u>64</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals, re: <u>63</u> Notice of Appeal. (Attachments: # <u>1</u> Civil Appeals Packet)(see) (Entered: 04/18/2014)
04/18/2014		Clerk mailed copies of the <u>64</u> Electronic Notice and Certification to USCA of Appeal with civil appeal packet and <u>63</u> Notice of Appeal to Craig Danzig on 4/18/2014 by regular mail. (see) (Entered: 04/18/2014)
04/25/2014	<u>65</u>	RESPONSE in Opposition re <u>62</u> MOTION for Remedies filed by Stratocomm Corporation. (Attachments: # <u>1</u> Memorandum of Law)(D'Orazio, Giovanna) (Entered: 04/25/2014)
04/25/2014	<u>66</u>	CERTIFICATE OF SERVICE by Stratocomm Corporation <i>of Opposition to Motion for Remedies</i> (D'Orazio, Giovanna) (Entered: 04/25/2014)
04/25/2014	<u>67</u>	RESPONSE in Opposition re <u>62</u> MOTION for Remedies filed by Roger D. Shearer. (Attachments: # <u>1</u> Declaration Declaration of Roger Shearer with Exhibits)(Knox, James) (Entered: 04/25/2014)
04/25/2014	<u>68</u>	CERTIFICATE OF SERVICE by Roger D. Shearer re <u>67</u> Response in Opposition to Motion (Knox, James) (Entered: 04/25/2014)
04/29/2014	<u>69</u>	Mail Returned as Undeliverable: copy of <u>63</u> Appeal sent to Craig Danzig, Address sent to [REDACTED] Boca Raton, FL [REDACTED] (cbm) (Entered: 04/29/2014)
05/01/2014	<u>70</u>	REPLY to Response to Motion re <u>62</u> MOTION for Remedies (<i>Plaintiff SEC's Reply in Further Support of Its Motion for Relief as to Defendants StratoComm Corporation, Roger D. Shearer, and Craig Danzig</i>) filed by Securities and Exchange Commission. (Attachments: # <u>1</u> Exhibit(s) 5)(Hong, Richard) (Entered: 05/01/2014)
05/02/2014	<u>71</u>	NOTICE OF APPEAL as to <u>61</u> Order on Motion for Summary Judgment, by Stratocomm Corporation. Filing fee \$ 505, receipt number 0206-2924798. (D'Orazio, Giovanna) (Entered: 05/02/2014)
05/02/2014		TEXT NOTICE to parties advising that the pending motion for 5/12/14 is on submit basis, appearances are not required. [Served by mail.] (sfp,) (Entered: 05/02/2014)

		05/02/2014)
05/02/2014	<u>72</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to U.S. Court of Appeals re <u>71</u> Notice of Appeal. (lah) (Entered: 05/02/2014)
05/08/2014		USCA Case Number is 14-1259 for <u>63</u> Appeal filed by Roger D. Shearer. (cbm) (Entered: 05/08/2014)
05/12/2014		Minute Entry: MOTION CALENDAR held 5/12/2014 bef Sr. District Judge Thomas J. McAvoy in Albany, NY: APP: None; CR: L. Tennyson; CRD/mp. Pltf Securities & Exchange Commission's <u>62</u> MOTION for Remedies - TAKEN ON SUBMIT. (cml) (Entered: 05/13/2014)
05/16/2014	<u>73</u>	Mail Returned as Undeliverable re: Text Notice sent to Craig Danzig. Address sent to [REDACTED], Boca Raton, FL [REDACTED] (dpk) (Entered: 05/19/2014)
05/16/2014	<u>74</u>	Mail Returned as Undeliverable re: <u>72</u> Electronic Notice and Certification to USCA of Appeal sent to Craig Danzig. Address sent to [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 05/21/2014)
08/18/2014	<u>75</u>	MANDATE of USCA as to <u>63</u> Notice of Appeal filed by Roger D. Shearer and <u>71</u> Notice of Appeal filed by Stratocomm Corporation (dpk) (Entered: 08/18/2014)
03/09/2015	<u>76</u>	DECISION and ORDER granting in part and denying in part <u>62</u> Motion for Remedies. This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Decision and Order and the subsequent Judgment. Signed by Senior Judge Thomas J. McAvoy on 3/9/2015. (dpk) (Entered: 03/09/2015)
03/09/2015		Sent copy of <u>76</u> Decision and Order to pro se defendant Craig Danzig via regular mail on 3/9/2015. (dpk) (Entered: 03/09/2015)
03/11/2015	<u>77</u>	JUDGMENT in accordance with Decision and Order signed by Judge Thomas J. McAvoy on 3/9/2015. (dpk) (Entered: 03/12/2015)
03/12/2015		Sent copy of <u>77</u> Judgment to defendant Craig Danzig on 3/12/2015. (dpk) Modified on 3/12/2015 (dpk). (Entered: 03/12/2015)
03/25/2015	<u>78</u>	<i>Unopposed</i> Letter Motion from SEC (requesting correction of a typographical error in Decision and Order, filed March 9, 2015 and Judgment in a Civil Case, filed March 11, 2015) for Securities and Exchange Commission requesting Correction of Final Judgment submitted to Judge McAvoy . (Attachments: # <u>1</u> Proposed Order/Judgment Corrected Proposed Final Judgment)(Hong, Richard) (Entered: 03/25/2015)
03/26/2015	<u>79</u>	ORDER granting <u>78</u> Letter Request. The Court's March 9, 2015 <u>76</u> Decision and Order is AMENDED to delete any reference to Roger D. Shearer having violated, and/or being permanently enjoined from violating, Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)]. The Judgment in this matter shall be amended accordingly. Signed by Senior Judge Thomas J. McAvoy on 3/26/2015. (dpk) (Entered: 03/26/2015)

03/26/2015	<u>80</u>	AMENDED JUDGMENT as to Defendants Stratocomm Corporation, Roger Shearer and Craig Danzig. (dpk) (Entered: 03/26/2015)
03/30/2015	<u>81</u>	Mail Returned as Undeliverable. re: <u>77</u> Judgment sent to Craig Danzig Address sent to [REDACTED] Boca Raton FL [REDACTED] (Attachments: # <u>1</u> mailing envelope) (tab) (Entered: 03/31/2015)
03/31/2015	<u>82</u>	Mail Returned as Undeliverable. re: <u>76</u> Order on Motion for Miscellaneous Relief, sent to Craig Danzig Address sent to [REDACTED] Boca Raton, FL [REDACTED] (Attachments: # <u>1</u> mailing envelope) (tab) (Entered: 03/31/2015)
05/07/2015	<u>83</u>	NOTICE OF APPEAL as to <u>80</u> Judgment by Stratocomm Corporation. No fee paid. (D'Orazio, Giovanna) (Entered: 05/07/2015)
05/07/2015	<u>84</u>	NOTICE by Stratocomm Corporation re <u>83</u> Notice of Appeal <i>that Appeal Fee Paid</i> (D'Orazio, Giovanna) (Entered: 05/07/2015)
05/07/2015		Filing fee: \$ 505.00, receipt number 0206-3282782 for <u>83</u> Notice of Appeal. (dpk) (Entered: 05/08/2015)
05/08/2015	<u>85</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re <u>83</u> Notice of Appeal (dpk) (Entered: 05/08/2015)
05/21/2015	<u>86</u>	NOTICE OF APPEAL by Roger D. Shearer. Filing fee \$ 505, receipt number ALB009187. (lah) (Entered: 05/22/2015)
05/22/2015	<u>87</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re <u>86</u> Notice of Appeal. (lah) (Entered: 05/22/2015)
05/26/2015	<u>88</u>	Mail Returned as Undeliverable re <u>85</u> Electronic Notice and Certification to USCA of Appeal sent to Craig Danzig. Address sent to: [REDACTED] [REDACTED] Boca Raton, FL [REDACTED] (dpk) (Entered: 05/28/2015)

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07/06/2015 11:09:04			
PACER Login:	se7166:3934705:4043519	Client Code:	111
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Billable Pages:	11	Cost:	1.10

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**STRATOCOMM CORPORATION,
ROGER D. SHEARER, and
CRAIG DANZIG,**

Defendants.

Case No. 1:11-CV-1188 (TJM/DRH)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF THE SECURITIES
AND EXCHANGE COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

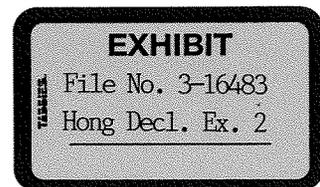
Pursuant to L.R. 7.1(a)(3) of the Local Rules of Practice for the United States District Court for the Northern District of New York, Plaintiff Securities and Exchange Commission respectfully states that the following material facts are not in genuine dispute.

StratoComm Corporation

1. StratoComm Corporation ("StratoComm") is a Delaware corporation that was incorporated in 1997. MSJ Ex. 1 (StratoComm Corporation "Entity Details" from the Delaware Department of State: Division of Corporations, available at <https://delecorp.delaware.gov/tin/GINameSearch.jsp>)

2. StratoComm describes itself as being in the business of designing, manufacturing, and selling telecommunications equipment. MSJ Ex. 2 (StratoComm's Executive Informational Overview (SEC Inv. Ex. #58) at 1, 3 and 5)

3. StratoComm's stock is a penny stock that is publicly traded and quoted on the electronic quotation system formerly known as the Pink Sheets. MSJ Ex. 3 (January 25, 2013 Deposition of Defendant Shearer at Tr. 62:19-63:8; 64:9-12)



4. From late 2007 until April 2010, StratoComm received approximately \$4 million from selling its stock to more than 100 investors, many of whom were unaccredited investors. MSJ Ex. 4 (Summary chart of bank records reflecting deposits from investors who purchased StratoComm stock); MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 135:9-14)

5. StratoComm has never filed a registration statement with the Commission. MSJ Ex. 5 (Attestation of Secretary of the U.S. Securities and Exchange Commission, Elizabeth Murphy); MSJ Ex. 3 (January 25, 2013 Deposition of Defendant Shearer at Tr. 66:4)

6. StratoComm never prepared audited financial statements or provided an offering memorandum to investors. MSJ Ex. 3 (January 25, 2013 Deposition of Defendant Shearer at Tr. 57:7-20); MSJ Ex. 6 (September 21, 2010, investigative testimony of Defendant Craig Danzig at Tr 134:19-25)

7. StratoComm operates a website that is publicly available at www.stratocomm.net. MSJ Ex. 7 (Printout of the homepage to StratoComm Corporation's website at www.stratocomm.net)

Roger D. Shearer

8. Roger D. Shearer founded StratoComm in 1997. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr. 329:18-22)

9. Shearer is the sole Officer and Director of StratoComm and has held those positions since the inception of the company. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 10:19-24)

10. Shearer is the Chief Executive Officer ("CEO") of StratoComm and has held that position since the inception of the company, except for a one-month period in the fall of 2010. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 9:11-10:11)

11. Shearer, as CEO, controlled the conduct of StratoComm during all periods in which he was CEO. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 9:15-20)

12. Shearer, as sole Director of StratoComm, authorized himself, as CEO of StratoComm, to issue StratoComm stock between January 2007 and January 2011. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 14:8-15:9)

13. From November 2007 until April 2010, Shearer was StratoComm's largest beneficial stockholder. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 136:7-137:6; 278:10-279:8; 301:7-10)

Craig Danzig

14. Craig Danzig was employed by StratoComm from at least 2007 until November 2010, initially as Director of Investor and Institutional Relations and subsequently as Executive Director of Institutional Relations. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig Danzig at Tr 47:13-24); MSJ Ex. 2 (StratoComm's Executive Informational Overview, Inv. MSJ Ex. #58 at 11); MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig Danzig at Tr 47:13-24); MSJ Ex. 9 (Compl. ¶ 15); MSJ Ex. 10 (Danzig Answer ¶ 15)

15. Prior to joining StratoComm, Danzig was a registered representative (commonly known as a "stockbroker") associated with several broker-dealers. MSJ Ex. 9 (Compl. ¶ 16); MSJ Ex. 10 (Danzig Answer ¶ 16); MSJ Ex. 11 (Danzig FINRA BrokerCheck Report at 3-4; publicly available at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>)

16. Danzig held a license to sell securities from 1991 until 2000, when it lapsed. MSJ Ex. 11 (Danzig FINRA BrokerCheck Report at 3-4; publicly available at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/>) MSJ Ex. 9 (Compl. ¶ 16); MSJ Ex. 10 (Danzig Answer ¶ 16)

17. From November 2007 through April 2010, Danzig was not licensed to sell securities. MSJ Ex. 9 (Compl. ¶ 16); MSJ Ex. 10 (Danzig Answer ¶ 16)

18. While employed by StratoComm, Craig Danzig used the e-mail addresses cdanzig@stratocomm.net and [REDACTED] to conduct official business. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 103:22-104:1; 112:9-15)

StratoComm Portrayed Itself as a Successful Telecommunications Company

19. During the period November 2007 through April 2010, StratoComm stated that it was designing, manufacturing and selling telecommunications equipment called the Transitional Telecommunications System (“TTS”) to countries in the developing world. MSJ Ex. 9 (Compl. ¶ 17); MSJ Ex. 12 (StratoComm and Shearer Answer ¶ 8); MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. MSJ Ex. #58) at 1, 3, 5, 19-20)

20. StratoComm described its TTS as consisting primarily of an antenna system suspended from a blimp (“aerostat”) tethered to the ground. MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. Ex. #58) at 5)

21. StratoComm stated that its TTS could provide 500,000 subscribers with broadband internet, wireless voice, or broadcast services. MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. Ex. #58) at 5)

22. StratoComm also stated that it was developing a Stratospheric Telecommunications System (“STS”), including solar-powered equipment to be stationed in the stratosphere 65,000 feet above ground. MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. Ex. #58) at 5)

23. StratoComm explained that the STS would be able to provide telecommunications services to three million customers in a 1,000 kilometer area. MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. Ex. #58) at 5)

24. StratoComm stated that it was operating on two parallel tracks: (i) current

production and sales of the TTS, and (ii) development of the stratospheric system. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 77:17-22 and 82:5-8)

The Truth About StratoComm

25. StratoComm has never actually built a TTS. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 103:17-20)

26. StratoComm has never tested an operational prototype of a TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 47:21-25, 54:6-8)

27. StratoComm has never had the funds to construct a TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 48:2-14); MSJ Ex. 13 (StratoComm Corporation's Answers to Interrogatories No. 8)

28. StratoComm has never had all of the parts to construct a TTS. MSJ Ex. 13 (StratoComm Corporation's Answers to Interrogatories No. 7)

29. StratoComm has never possessed an aerostat. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 19:91-21)

30. StratoComm has never had the funds to acquire an aerostat. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 19:22-20:3)

31. StratoComm has never exchanged a TTS for money. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 431:25-432:3)

32. StratoComm has never received a deposit on a TTS. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 432:4-7)

33. As of late 2007, StratoComm had not yet resolved basic design issues relating to the TTS and had only estimated the cost of the system at a rough level. MSJ Ex. 14 (Investigative Testimony of Richard Buchanan at Tr 79:17-82:16)

34. StratoComm has never acquired any customers who transmitted payment to StratoComm for products or services. MSJ Ex. 13 (StratoComm's Answers to Interrogatories No. 5)

35. StratoComm has never had any revenue. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 66:19)

36. StratoComm's sole source of support, aside from loans from friends and family, has been the money that it received from selling its securities to investors. MSJ Ex. 9 (Compl. ¶ 20); MSJ Ex. 12 (StratoComm and Shearer Answer ¶ 10)

StratoComm's False And Misleading Statements

37. During the November 2007 through May 2009 time period, Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, was authorized to write, publish and distribute press releases on behalf of StratoComm. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 9:15-20, 43:7-14, 47:3-20 and 53:16-25); MSJ Ex. 15 (StratoComm Admissions, No.s 2, 3 and 4)

38. *November 20, 2007 Press Release*

39. On November 20, 2007, StratoComm issued a press release entitled "StratoComm Announces \$45 Million System Sale." The press release identifies StratoComm as its source. MSJ Ex. 16 (November 20, 2007, StratoComm Press Release (Inv. Ex. #51))

40. Shearer, acting within the scope of his authority, and in his capacity as CEO of StratoComm, wrote the November 20, 2007 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 47:3-13)

41. Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, authorized the release and publication of the November 20, 2007 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 47:17-20)

42. StratoComm's November 20, 2007 press release was posted on StratoComm's website on or about November 20, 2007. MSJ Ex. 17 (Printouts of a page of StratoComm's website available at <http://www.stratocomm.net/newsmedia/> (images captured on September 22, 2009))

43. StratoComm's November 20, 2007 press release was distributed to the public via PR Newswire on or about November 20, 2007. MSJ Ex. (16 November 20, 2007, StratoComm Press Release (Inv. Ex. #51))

44. StratoComm's November 20, 2007 press release states that Evergreen ISP Platform, PLC "has contracted with StratoComm for the purchase of \$45,000,000 of StratoComm Transitional System telecommunications equipment and services." MSJ Ex. 16 (November 20, 2007, StratoComm Press Release (Inv. Ex. #51))

45. The press release described StratoComm as a "provider" of "telecommunications infrastructure technologies" and stated that a "\$45 million contract" was "awarded" to StratoComm by an entity in Cameroon for three TTS units and related services. MSJ Ex. 16 (November 20, 2007, StratoComm Press Release (Inv. Ex. #51))

46. As of November 20, 2007, StratoComm had never built or tested an operational TTS and StratoComm did not have the money to do so. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 103:17-20); MSJ Ex. 13 (StratoComm's Answers to Interrogatories No. 8)

47. On November 20, 2007, Shearer knew that StratoComm did not have an operational TTS prototype and had no TTS units to supply. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 47:21-25); MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 103:16)

48. On November, 20, 2007, Shearer knew StratoComm did not have the funding in

place to build a TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 48:2-4)

49. On November 20, 2007, StratoComm had not provided telecommunications infrastructure technologies to any person or entity. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 93:1-5)

50. When Shearer drafted the November 20, 2007 press release, he knew that StratoComm had not provided telecommunications infrastructure technologies to any person or entity. MSJ Ex. 18 (Shearer Admissions, No. 12); MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 93:1-5)

51. StratoComm never received a monetary deposit or payment from Evergreen ISP Platform based upon the sale announced in the November 20, 2007 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:22-35:5)

52. StratoComm never received any revenue based upon the sale referenced in the November 20, 2007 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:22-35:5)

January 29, 2008 Press Release

53. On January 29, 2008, StratoComm issued a press release announcing the sale, valued at \$15 million, of a TTS and related services to StratoComm's joint venture partner in Madagascar. The press release identifies StratoComm as its source. MSJ Ex. 19 (January 29, 2008, StratoComm Corporation Press Release (Inv. Ex. # 57))

54. Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, wrote the January 29, 2008 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 53:16-17)

55. Shearer, acting within the scope of his authority and in his capacity as CEO of

StratoComm, authorized the release and publication of the January 29, 2008 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 53:22-25)

56. StratoComm's January 29, 2008 press release was posted on StratoComm's website on or about February 26, 2008. MSJ Ex. 17 (Printout of news media page of StratoComm's website available at <http://www.stratocomm.net/newsmedia/>(images captured on September 22, 2009)

57. StratoComm's January 29, 2008 press release was distributed to the public via PR Newswire on or about January 29, 2008. MSJ Ex. 19 (January 29, 2008, StratoComm Corporation Press Release (Inv. Ex. # 57))

58. StratoComm's January 29, 2008 press release referred to the Madagascar transaction as "StratoComm's most recent system sale." MSJ Ex. 19 (January 29, 2008, StratoComm Corporation Press Release (Inv. Ex. # 57))

59. The January 29, 2008 press release described StratoComm as a "provider" of telecommunications infrastructure technologies. MSJ Ex. 19 (January 29, 2008, StratoComm Corporation Press Release (Inv. Ex. # 57))

60. As of January 29, 2008, StratoComm had never built or tested an operational TTS and StratoComm did not have the money to do so. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 54:6-12); MSJ Ex. 15 (StratoComm Admissions, No.s 18 and 19); MSJ Ex. 13 (StratoComm's Answers to Interrogatories No. 8)

61. As of January 29, 2008, Shearer knew that StratoComm did not have an operational TTS prototype or TTS unit to supply to Madagascar. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 54:6-8)

62. As of January 29, 2008, Shearer knew that StratoComm did not have the funding in place to build a TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at

Tr 54:9-12).

63. On January 29, 2008, StratoComm had not provided telecommunications infrastructure technologies to any person or entity. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 93:1-5)

64. When Shearer drafted the January 29, 2008 press release, he knew that StratoComm had not “provided” telecommunications infrastructure technologies to any person or entity. MSJ Ex. 18 (Shearer Admissions, No. 24); MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 93:1-5)

65. StratoComm never received a monetary deposit or payment from StratoComm Madagascar SA based upon the sale announced in the January 29, 2008 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:22-35:5)

66. StratoComm never received any revenue based upon the agreement referenced in the January 29, 2008 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:22-35:5)

September 2, 2008 “Executive Informational Overview”

67. On September 2, 2008, StratoComm’s Executive Informational Overview was published. MSJ Ex. 2 (StratoComm’s Executive Informational Overview (Inv. Ex. #58) at 1)

68. The Executive Informational Overview was prepared at the direction of Shearer acting within the scope of his authority and in his capacity as CEO of StratoComm. MSJ Ex. 20 (“The Truth Should Matter” by Roger D. Shearer (Deposition Exhibit #13)); MSJ Ex. 18 (Shearer Admissions, No. 26); MSJ Ex. 9 (Compl. ¶ 31); MSJ Ex. 12 (StratoComm and Shearer Answer ¶ 20)

69. The Executive Informational Overview was prepared by StratoComm with the assistance of Crystal Research Associates, LLC. MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 52)

70. StratoComm paid Crystal Research Associates \$40,000 and 300,000 StratoComm stock warrants to assist in the preparation of the Executive Informational Overview. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 452:15-453:6); MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58 at 52))

71. The Executive Informational Overview was based upon information provided by StratoComm. MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58 at 52))

72. Shearer reviewed, approved and authorized the release of the Executive Informational Overview. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr at 40:16-41:5); MSJ Ex. 20 ("The Truth Should Matter" by Roger D. Shearer (Deposition Exhibit #13))

73. StratoComm's logo and contact information appeared at the top of the first page of the Executive Informational Overview and StratoComm's logo appears on every page of the document. MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58))

74. StratoComm's Executive Informational Overview stated that, "StratoComm's aerostat is nearly 37 meters in length and 12 meters at its widest portion. It meets all U.S. Federal Aviation Administration (FAA) requirements, including the presence of an emergency flight termination system and proper lighting, and can carry a payload of up to 225 kilograms." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 5, 19)

75. StratoComm's Executive Informational Overview made the following assertions regarding the dimensions and performance of the TTS:

The TTS is a tethered aerostat 37 meters in length positioned 1,500 meters above the region for which it provides telecommunications.

Due to its proprietary payload designed in-house by StratoComm's Development Team, the TTS can support broadband Internet, wireless voice, or broadcast services (up to 100 video channels) for roughly 500,000 customers in an 80-kilometer diameter area.

MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58 at 37))

76. StratoComm's Executive Informational Overview described the TTS as "presently available." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 13)

77. StratoComm's Executive Informational Overview stated that much of the company's resources were devoted to support of its "installed TTSs." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 6)

78. StratoComm's Executive Informational Overview contained pictures and artist's renderings presented in a manner suggesting that they represented existing StratoComm systems, such as tethered airships. MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 18, 20, 21)

79. StratoComm's Executive Informational Overview stated that, "[a]t present, the Company has sold three TTS aerostats to Cameroon [and] one to Madagascar..." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 18)

80. StratoComm's Executive Informational Overview stated that StratoComm was "presently selling" the TTS, that TTS units "have been sold...for \$60 million to date," and that its goal was to obtain "up to an additional \$75 million in sales" by the end of 2008, which was less than four months after the Executive Informational Overview was issued. MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 13, 36)

81. StratoComm's Executive Informational Overview stated that "the TTS now supports wireless telephony." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 21)

82. StratoComm's Executive Informational Overview stated that, "StratoComm anticipates that the first TTS unit will likely be in service by the first quarter 2009." MSJ Ex. 2 (StratoComm's Executive Informational Overview (Inv. Ex. #58) at 23)

83. StratoComm's Executive Informational Overview described a product that does not exist and sales that never occurred. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 103:17-20); MSJ Ex. 15 (StratoComm Admissions, No.s 7, 11 and 18); MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:22-35:5)

84. When Shearer approved the Executive Informational Overview for public distribution, he knew that StratoComm had never owned an aerostat. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 19:21)

85. When Shearer approved the Executive Informational Overview for public distribution, he knew that StratoComm never had the funding to purchase an aerostat or build an operational TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 19:22-20:17)

86. When Shearer approved the Executive Informational Overview for public distribution, he knew that StratoComm has never delivered an operational TTS to any entity. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:9-21)

87. When Shearer approved the Executive Informational Overview for public distribution, he knew that StratoComm had not installed a TTS. MSJ Ex. 18 (Shearer Admissions, No. 31); MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 34:15-21)

88. When Shearer approved the Executive Informational Overview for public distribution, he knew that StratoComm had not received payment in connection with the sales agreements referenced in the November 20, 2007 and January 29, 2008 press releases. MSJ Ex. 18

(Shearer Admissions, Nos. 11 and 23); MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 37:15-38:8).

89. Danzig reviewed the Executive Informational Overview before it was finalized. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 63:21-64:5)

90. StratoComm's Executive Informational Overview was placed on StratoComm's website on or about December 3, 2008. MSJ Ex. 17 (Printouts of news media page of StratoComm's website available at <http://www.stratocomm.net/newsmedia/> (images captured on September 22, 2009)

91. StratoComm's Executive Informational Overview was also posted on Crystal Research Associates' website on or about September 2, 2008. MSJ Ex. 15 (StratoComm Admissions, No. 12); MSJ Ex. 21 (December 3, 2008 Danzig e-mail (SEC-Shearer-E-0024679)); MSJ Ex. 22 (August 5, 2009 Danzig e-mail (SEC-Danzig-E-0022828-30)); MSJ Ex. 23 (October 15, 2009 Danzig e-mail (SEC-Danzig-E-0022537)); MSJ Ex. 24 (April 21, 2010 Danzig e-mail (SEC-Danzig-E-0020121))

May 5, 2009 Press Release

92. On May 5, 2009, StratoComm issued a press release entitled, "StratoComm Corporation Schedules Initial System Turn On." MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. # 42))

93. Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, wrote the May 5, 2009 press release. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 43:7-8)

94. Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, authorized the release and publication of the May 5, 2009 press release. MSJ Ex. 3

(January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 43:12-14); MSJ Ex. 18 (Shearer Admissions, No. 36)

95. StratoComm's May 5, 2009 press release was distributed via PR Newswire on or about May 5, 2009. MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. #42))

96. The press release identifies "StratoComm Corporation" as its "source." MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. # 42))

97. StratoComm's May 5, 2009 press release noted that, "a team of engineers" was departing for Cameroon "the location for installation of StratoComm's first commercial wireless telecommunications system." MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. #42))

98. StratoComm's May 5, 2009 press release described testing of the system at the company's facilities in New Jersey and the scheduled departure of the "installation and training team." MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. #42))

99. StratoComm's May 5, 2009 press release emphasized that testing would ensure "efficient installation and reliable operation with system turn on." MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. #42))

100. The reference in the May 5, 2009, press release to "StratoComm's first commercial wireless telecommunications system" was not to a TTS. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 21:8-22:2)

101. The system to be installed in Cameroon involved placement of telecommunications equipment on a radio tower. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 21:8-22:2)

102. The press release did not disclose that the system installed in Cameroon was not a TTS. MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. # 42))

103. The press release did not disclose that the system installed in Cameroon was anchored to a tower. MSJ Ex. 25 (May 5, 2009, StratoComm Corporation Press Release (Inv. Ex. # 42))

104. If StratoComm had progressed to a stage where it had constructed and installed a TTS, that would have been a very significant event for the company. MSJ Ex. 8 (Investigative Testimony of Defendant Roger D. Shearer at Tr 364:23-365:2)

Danzig Markets and Sells StratoComm Stock

105. In his role as Director of Investor and Institutional Relations and subsequently as Executive Director of Institutional Relations, Danzig's primary responsibility was to market StratoComm's stock to investors. MSJ Ex. 9 (Compl. ¶ 36); MSJ Ex. 10 (Danzig Answer ¶ 36); MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 44:25-45:17; 47:25-50:6.)

106. Danzig marketed StratoComm's stock throughout the country by telephone, through e-mail and in face-to-face meetings. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 78:12-23); MSJ Ex. 26 (March 11, 2010, Danzig e-mail (SEC-Shearer-E-0011470)); MSJ Ex. 27 (October 1, 2008 e-mail to Danzig (SEC-Shearer-E-0026237)); MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 117:6-9)

107. Danzig used the Executive Informational Overview as a "selling tool" to market StratoComm's stock and to convince investors of StratoComm's "legitimacy." MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 74:11-75:5)

108. Danzig routinely directed potential investors to the Executive Informational Overview on the Crystal Research website. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 74:11-22; 78:12-14); MSJ Ex. 21 (December 3, 2008 Danzig e-mail

(SEC-Shearer-E-0024679)0; MSJ Ex. 22 (August 5, 2009 Danzig e-mail (SEC-Danzig-E-0022828-30)); MSJ Ex. 23 (October 15, 2009 Danzig e-mail (SEC-Danzig-E-0022537)); MSJ Ex. 24 (April 21, 2010 Danzig e-mail (SEC-Danzig-E-0020121))

109. Danzig arranged for a copy of the Executive Informational Overview to be sent to a potential investor. MSJ Ex. 28 (October 19, 2009 e-mail (SEC-Danzig-E-0013755))

110. Danzig instructed a stock broker to use the Executive Informational Overview in dealing with a client considering an investment in StratoComm. MSJ Ex. 6 MSJ (Investigative Testimony of Defendant Craig Danzig Danzig at Tr 130: 20-23); MSJ Ex. 29 (August 3, 2009 Danzig e-mail (SEC-Danzig-E-0022884))

111. Danzig directed potential providers of public relations services to the Executive Informational Overview. MSJ Ex. 30 (July 12, 2009 Danzig e-mail (SEC-Shearer-E-0019589))

112. Danzig directed potential providers of investment banking services to the Executive Informational Overview. MSJ Ex. 31 (December 30, 2008 Danzig e-mails (SEC-Shearer-E-0023266-68; 0024270-71))

113. When Danzig distributed the Executive Informational Overview to potential investors, Danzig knew that StratoComm did not have a TTS. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 64:14-20)

114. In an email on October 30, 2009, more than a year after the Executive Informational Overview was issued, Danzig complained to Shearer that StratoComm had “no money, and no product.” MSJ Ex. 32 (October 31, 2009 Danzig e-mail (SEC-Shearer-E-0016488))

115. Danzig served as the designated contact within StratoComm for investors, relayed the terms of stock sales, handled paperwork relating to stock sales, and facilitated the issuance of shares. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 48:21-49:16); MSJ Ex. 26 (March 11, 2010, Danzig e-mail (SEC-Shearer-E-0011470))

116. StratoComm paid Danzig a salary plus a “discretionary bonus” that was based on his performance in raising money by selling the company’s securities. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 45:25-47:6; 229:10-230:6)

117. While marketing and selling StratoComm stock to investors, Danzig was not registered as a broker and was not associated with a registered broker. MSJ Ex. 9 (Compl. ¶¶ 5, 16, 38 and 62); MSJ Ex. 10 (Danzig Answer ¶¶ 5, 16, 38 and 62)

StratoComm’s Unregistered Stock Sales

118. StratoComm issued more than 62 million shares of stock to investors between late 2007 and April 2010. MSJ Ex. 33 (Relevant excerpted portions of Florida Atlantic Stock Transfer Report for StratoComm Corporation)

119. From the inception of the company, StratoComm offered and sold stock to investors who were not accredited. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 19:12-18 and 17:5-7)

120. Many of StratoComm’s shareholders were inexperienced with investing. MSJ Ex. (Investigative Testimony of Defendant Craig Danzig at Tr 135:9-14)

121. From November 2011 through April 2010, StratoComm did not provide an offering memorandum to investors. MSJ Ex. 6 (Investigative Testimony of Defendant Craig Danzig at Tr 134:19-25)

122. As StratoComm’s CEO and sole director, Shearer authorized StratoComm’s stock sales and directed the transfer agent to issue stock certificates. MSJ Ex. 3 (January 25, 2013, deposition of Defendant Roger D. Shearer at Tr 14:8-15:9); MSJ Ex. 15 (StratoComm Admissions, No. 40 and 41)

Respectfully submitted,

April 4, 2013

/s/ Jane M.E. Peterson

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CERTIFICATE OF SERVICE

I certify that on April 4, 2013, I caused the foregoing STATEMENT OF MATERIAL FACTS IN SUPPORT OF THE SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT to be filed through the ECF system which will be served electronically upon the registered participants as identified on the Notice of Electronic Filing (NEF) and to be served on counsel for Defendant Roger D. Shearer via e-mail addressed to esjones@esjlaw.com, bessetca@esjlaw.com, knoxja@esjlaw.com, sangerki@esjlaw.com and counsel for Defendant StratoComm Corporation via e-mail addressed to B Hill@dreyerboyajian.com and by U.S. Mail, first-class postage prepaid as addressed below, and on Defendant Craig Danzig, *pro se*, via e-mail addressed to [REDACTED] and by U.S. Mail, first-class postage prepaid, addressed to:

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/s/ Jane M.E. Peterson

MSJ Ex. 6

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1	APPEARANCES:
2	
3	On behalf of the Securities and Exchange Commission:
4	JENNIFER S. LEETE, ESQ.
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1	PROCEEDINGS
2	MS. LEETE: On the record at 10:09, Tuesday,
3	September 21, 2010.
4	Please raise your right hand.
5	Whereupon,
6	CRAIG DANZIG
7	was called as a witness and, having been first duly sworn,
8	was examined and testified as follows:
9	MS. LEETE: State and spell your name, please.
10	THE WITNESS: My name is Craig Danzig, C-r-a-i-g-
11	Last name Danzig, D-a-n-z-i-g, as in "good."
12	MS. LEETE: Good morning, Mr. Danzig. My name is
13	Jennifer Leete. With me today is Sarah Allgeier. We are
14	attorneys in the Enforcement Division and officers of the
15	Commission for purposes of this proceeding.
16	This is an investigation by the United States
17	Securities and Exchange Commission in the matter of
18	StratoComm, No: HO-10727, to determine whether there have
19	been violations of the certain provisions of the federal
20	securities laws. However, the facts developed in this
21	investigation might constitute violations of other federal or
22	state, civil or criminal laws.
23	Prior to the opening of the record, you were
24	provided with a copy of the Formal Order of Investigation in
25	this matter. It will be available for your examination

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1 it wasn't approved but I went out and -- it was in Tampa, and
 2 I went out in my boat and helped people that were broken down
 3 or shipwrecked. I did search and rescue sometimes
 4 voluntarily.
 5 Q So you were living in Florida?
 6 A Living in Tampa. And I was just taking off and
 7 relaxing.
 8 Q Did you have any involvement with any
 9 broker-dealers during that time?
 10 A No.
 11 Q Did you have any involvement with any publicly
 12 traded companies --
 13 A No. StratoComm is the first and only company, with
 14 the exception of when I worked as a stockbroker doing IPOs.
 15 StratoComm is the only publicly traded company that I've ever
 16 worked for.
 17 Q So Efoora was not publicly traded?
 18 A No. They didn't make it to the public market.
 19 Q How did you first meet Roger Shearer?
 20 A I met Roger in 1997, '98.
 21 Q How did you meet him?
 22 A Through a promoter named David Howe.
 23 Q Spell that please.
 24 A David and Howe, H-o-w-e. David is a Florida stock
 25 promoter and trumpeteer. He's a pretty nice guy.

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1 Q Okay. And how did it come about that you met
 2 Roger?
 3 A I had met David, and I was consulting for First
 4 West, and we were looking for product, and he had showed me
 5 Sky Station International at the time. And I was actually
 6 impressed with the company. I thought the technology was
 7 great and I was a big fan of General Haig.
 8 Q Did you do any work for Sky Station International?
 9 A Me personally, no. I had met Alex, Jr. I had
 10 dinner with him in Washington a couple of times. That was
 11 about it. Nice man.
 12 Q Did you ever do any work for U.S. Africa Ventures?
 13 A Yeah, U.S. Africa Ventures is StratoComm.
 14 Q Describe what you did for U.S. Africa Ventures when
 15 it was still U.S. Africa Ventures.
 16 A Well, my relationship with U.S. Africa Ventures is
 17 indirect, because I never billed them. I never got paid by
 18 them. I got paid by First West who I did all the consulting
 19 for. So my relationship was just consulting, but I was never
 20 given any type of restitution -- excuse my word -- or any
 21 type of pay or consulting fees through U.S. Africa Ventures.
 22 Q Who runs First West?
 23 A Richard Linz ran First West.
 24 Q L-i-n-z?
 25 A Yes. He was the manager. My job was to help set

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1 up the company, do all the consulting for them and they
 2 didn't know much, so I did all that work for them.
 3 Q Okay. So you met Roger Shearer in 1997. But you
 4 didn't join --
 5 A It could be early 1998. I don't remember right
 6 now.
 7 Q Okay. Approximately is fine.
 8 Then when did you actually join StratoComm?
 9 A 2007.
 10 Q Okay. What was your relationship with Roger
 11 Shearer between -- I realized it's a decade we're talking
 12 about, but during those years, what was your relationship
 13 with Roger Shearer?
 14 A Embattled.
 15 Q Embattled? Okay. Please elaborate.
 16 A Roger and I go back a long time. I've known him a
 17 long time. I disagreed with a lot of things that he had done
 18 and I agreed with a lot of things he had done. So check
 19 points, constantly check points. Some answered, some not
 20 answered.
 21 Q Okay. And were you doing any work with Mr. Shearer
 22 from 1997 approximately through to 2007?
 23 A Nothing. I had no relationships with any of his
 24 companies.
 25 Q Okay. And how did it come about that you joined

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1 StratoComm in 2007?
 2 A Well, Efoora was no longer operating, and I was
 3 very concerned. I was looking for work, and Roger always
 4 kept -- you know, hello and hello/goodbye. And he called me
 5 up and said he wanted to get StratoComm back on its feet.
 6 And I said, "Well, if you get rid of all these guys that you
 7 have out there raising money, and let me do it solely myself
 8 and give me the authority, and I'll come back to work for
 9 you."
 10 Q And did he agree?
 11 A Yes.
 12 Q When you referred to "all these guys raising
 13 money," who are you talking about?
 14 A He just had certain people out there that I didn't
 15 even know. I didn't want one shareholder wanting from me and
 16 another. I wanted it to be continuous. I try to be
 17 autonomous that way.
 18 Q Okay. So when did you become a full-time employee
 19 of StratoComm?
 20 A The end of the summer, July -- oh, excuse me, 2007,
 21 at around, you know, August, September, October. I don't
 22 have those records in front of me but I did get paid a salary
 23 in 2007, so I'd have to go to the tax returns, but I believe
 24 it was about four months I was there.
 25 Q Okay. What was your salary when you joined

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1 StratoComm?

2 A The salary was \$15,000 a month is what it comes out

3 to.

4 Q \$15,000 a month?

5 A A month, right

6 Q Has that been your salary the whole time?

7 A Yes. With discretionary bonuses depending on my

8 performance.

9 Q Have you ever received a discretionary bonus?

10 A Oh, yes.

11 Q Okay. Please describe that.

12 A A discretionary bonuses is based on the performance

13 of how much money I raised. We were very cautious not to

14 consider it a commission, so it was not as a base salary, and

15 we based it on him putting aside certain funds so I can get

16 paid, which not always was the case. It was a \$5000 base

17 salary every two weeks, with a \$2500 bonus. That is now

18 since changed. Rob has asked me to take a salary cut to

19 \$5000, and I've agreed.

20 Q So it's \$5000 every two weeks of salary.

21 A Every two weeks, yes. \$10,000 a month.

22 Q Okay. And then \$2500 every two weeks?

23 A Yes.

24 Q As a bonus.

25 A Discretionary bonus. Whether I achieved in raising

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1 enough money and if the company had the funds to give it to

2 me.

3 Q Okay. So that discretionary bonus -- the

4 discretionary part is whether you get paid or not. It's not

5 how much the bonus is, is that correct?

6 A Yes.

7 Q And how often did you receive that bonus?

8 A Intermittently. Sometimes I received it, and

9 sometimes I didn't, depending on the functionality of the

10 company and whether the company had enough funds to pay it

11 before taking out our commitments and paying bills, things of

12 that nature.

13 Q Okay. When you were hired, what was your title?

14 A Director of investor relations.

15 Q And did that ever change?

16 A Yes. I wanted it changed to executive director of

17 institutional relations, because my job far exceeded talking

18 to investors.

19 Q Okay. And when was that --

20 A About a year ago, a year and a half ago. I don't

21 remember the exact date, Ms. Leete.

22 Q About a year ago it changed to executive director

23 of institutional --

24 A Institutional relations.

25 Q Okay. When you joined StratoComm, what were you

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1 responsibilities?

2 A Raising money, was one of my responsibilities.

3 Media relations, telecommunications, all investor relations,

4 coordinating the offices, called "office management," if you

5 want to say that. Training of receptionists, everything

6 except my responsibilities were not -- as far as financing, I

7 was raising the money. I was always inquiring about where

8 the money was going, how it was going, and our use of

9 proceeds and where that was going.

10 Until just recently, Ray Lasky and Rob Phillips has

11 started informing me where all the money is going.

12 Q Okay. When you say "media relations," --

13 A Dealing with all the stock promoters which had

14 issues for us, the stock promoters, advertisers, stockbrokers

15 if they call in. I've made no presentations to any banks or

16 institutions as far as any private placements for that

17 matter. But it was just --

18 Q You have not done that?

19 A No. Just an accumulation of various duties.

20 Q Okay.

21 A Mostly handling the investors. And getting out

22 stock certificates, just everything from soup to nuts. We

23 were real behind in the paperwork when I got there and we

24 continue to be.

25 Q When you say "getting out stock certificates," what

Page 49

1 do you mean?

2 A Well, when I sold stock to investors, and I've

3 never reached to the public. It was strictly investors of

4 record. People that had accounts or people had bought stock

5 in the open market, we were delayed in sending out stock

6 certificates just because clerically we couldn't handle it.

7 And this right now at this moment is being cleared up, to my

8 knowledge, maybe there's two or three people who have not

9 received their shares.

10 We also have a box at the office, which is as big

11 as that box, with certificates that we just can't seem to

12 find the people, so there's a lot of people that have stocks

13 that don't know they have stock.

14 So it's been almost virtually impossible so we wait

15 for them to call in, and we've had some complaints, and we

16 normally get to them as soon as we can.

17 Q Okay. When you say -- and correct me if I'm

18 misspeaking, I don't want to put words in your mouth -- but

19 you said something like "you don't reach out to the public,

20 you only contact to distinct shareholders."

21 A Yes.

22 Q Can you elaborate on that?

23 A We have a shareholder list of approximately -- oh,

24 it's 270 pages long. It's approximately a couple of thousand

25 people. And I was directed by Roger to only reach out to

1 shareholders of record and people that have existing
 2 relationships, that we were not to do any e-mail
 3 advertisements or -- of course, a half a million tombstones.
 4 So we did not reach out to the general public.
 5 Roger was very strict about that because he'd had an issue in
 6 the past with that. So I adhere to it.
 7 Q And where did the people on the 270-page
 8 shareholder list come from?
 9 A The shareholders. The shareholders we have
 10 in-house. We have a database and, of course, the transfer
 11 agent, which was Florida Atlantic Stock Transfer. And now
 12 it's Pacific Stock Transfer.
 13 Q When did that change happen?
 14 A Florida Atlantic sold about three or four months
 15 ago. So they just inherited our accounts. And they've fixed
 16 up a lot of our issues, Pacific. And now I do have authority
 17 to talk to transfer agents and find out --
 18 Q You say you do have the authority --
 19 A Now.
 20 Q When did that begin?
 21 A Well, I would talk to Florida Atlantic but I was
 22 never -- I wasn't allowed to take any information. Just
 23 recently. I just recently got told --
 24 Q Last month or in the last year?
 25 A Well, actually since Rob took over. There's been

1 more open communications. Definitely an issue with our
 2 company.
 3 Q You referred to an in-house database of
 4 shareholders.
 5 A Yes. We have.
 6 Q To your knowledge, is there anybody on that list
 7 who is not also on the transfer agent list? Are they
 8 different?
 9 A Everybody that owns stock on that list has to be on
 10 the transfer agent list. They have to be. There wouldn't be
 11 any reason why there wouldn't be. Unless -- I understand
 12 there's a lot of -- in the change, there's a lot of -- I
 13 don't want to say "mix-up," but a lot of miscommunications
 14 amongst the transfer agent being changed and also, you know,
 15 in our box of securities, but every issue, every stock that
 16 was issued is issued by the transfer agent. Common stock.
 17 Q Okay. Does the company have any preferred stock?
 18 A It did for a short period of time. And I don't --
 19 I may have sent those agreements via e-mail. Roger told me
 20 he didn't have them. And they were preferred stock at an
 21 offering of \$1 a share that went to a select group of
 22 shareholders.
 23 Q About when was that?
 24 A When I started, up until around -- well, they've
 25 been going on for about five months, six months. And then

1 we'd change over to common.
 2 Q Did you have any consulting-type relationship with
 3 StratoComm before you joined the company full time?
 4 A No.
 5 Q I think you said you were a member of the
 6 StratoComm board of directors.
 7 A No, I'm not. I would like to be but I'm not.
 8 Q When I asked you if you are now or have ever been
 9 an officer or director of a public company --
 10 A I'm a director.
 11 Q Yes, a director.
 12 A Yeah, but the director doesn't mean necessarily,
 13 Ms. Lee, you're on the board of directors.
 14 Q Oh, I see.
 15 A I'm sorry. I didn't mean to mislead you. I'm
 16 sorry.
 17 Q Okay.
 18 A Well, I've been trying to get on the board.
 19 Q Have you ever been a member of the board of
 20 directors of StratoComm?
 21 A No. But I'm willing -- I'm trying to very much so.
 22 Q When you say you've been a director, it's because
 23 you're the director of investor relations.
 24 A Yes. I'm sorry, I apologize.
 25 Q Okay. Now, since you went to work for StratoComm

1 in 2007, where have you worked?
 2 A I worked in the Albany offices.
 3 Q How often were you there?
 4 A I was there everyday. I work very long hours
 5 wherever I work. I work very long hours. I get to work at 8
 6 or 9:00 in the morning, sometimes work to 11:00 at night.
 7 When I left the offices where I am now, and I work extremely
 8 long hours.
 9 Q Since you moved to Arkansas, you've been working
 10 out of your house, is that correct?
 11 A Well, it's an office that I made in the house.
 12 It's not my house. [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 Q Now, you listed a couple of different things that
 16 you do for StratoComm, but have you played any role in
 17 creating any of StratoComm's products?
 18 A No. I'm very boisterous though on the products.
 19 Q You are very boisterous. What do you mean?
 20 A I would like to be more involved. For instance, we
 21 just recently got a patent for a helium feed. On any of the
 22 press releases, so you all know, I have never -- and it's
 23 been part of my -- what you call it, issue with Roger -- is
 24 that I would never get to see the press releases before they
 25 came out, with the exception of one, where I finally got

<p style="text-align: center;">Page 62</p> <p>1 information right now, but we're mainly current most of the 2 time with our financials and quarterly statements.</p> <p>3 Q Okay. I asked you before whether you have any role 4 in creating StratoComm's products, but could you describe for 5 me your understanding of what StratoComm's products are?</p> <p>6 A Okay. We have three products. This is all to my 7 knowledge on what I have done on my own discovery. I do my 8 best to do as much research as possible without direction of 9 the company. I'm somewhat independent about that.</p> <p>10 This is, to my knowledge, what we have. First we 11 have an interim system. An interim system is a system that's 12 put on a tower, I don't know how many hundreds of feet in the 13 sky. And the interim system was a -- let me slow down a 14 little -- it was a system to prove that we had product, to 15 show that we had something. A proof-of-concept system is 16 what it was labeled as at the company. This is a system, 17 again, to my knowledge, and I'm pretty accurate this is true, 18 according to Rob and Roger.</p> <p>19 We have a system up and running in Cameroon. It's 20 in the Roman Capital compound, and according to William 21 Tyler, and this was not directly -- but the letter wasn't 22 pointed to me, it was given to Roger saying what he's 23 accomplished. Twenty hospitals. I don't know if you've seen 24 that letter, all that. I thought that was a pretty good 25 letter.</p>	<p style="text-align: center;">Page 64</p> <p>1 don't completely agree with the report, I did not have 2 anything to do with the report other than -- in fact, my name 3 wasn't even on the report as director of investor relations. 4 Just five minutes before it went to print, I complained to 5 Roger, "Why isn't my name on this research report?"</p> <p>6 Q Five minutes before you complained why was it in 7 there or why is it not in there?</p> <p>8 A Well, when I got the research report sent 9 electronically and I read it, my name wasn't on it as 10 director of institutional relations, and I kind of flipped 11 out. I said, "Why isn't my name on here? I'm involved and I 12 helped you." And in the last minute they put it on. And 13 it's always been an ongoing issue with me and Roger.</p> <p>14 Q Okay. Back to StratoComm's products. 15 The tethered system, is that also known as the 16 telecommunications transitional system, or TTS?</p> <p>17 A Yes.</p> <p>18 Q Okay. And has StratoComm actually built one of 19 those?</p> <p>20 A No.</p> <p>21 Q What has StratoComm done in connection with that?</p> <p>22 A To my knowledge again, I'm not involved entirely 23 too much with this other than what I'm told. We have 24 supplied a purchase order to the Department of Army, the 25 Department of Navy, ILS, to purchase an aerostat in the</p>
<p style="text-align: center;">Page 63</p> <p>1 So the system is working and operational. When I 2 came back -- because we had to start paying back the notes. 3 When I came back, I was getting a little further -- I don't 4 want to go in too much detail, but this question.</p> <p>5 We had the interim system, and then now that we 6 have an interim system, we have a licensing agreement. We 7 have a license agreement with the Cameroon telecom industry. 8 We have frequency allocations, and we have a tower at present 9 that actually works. People actually using it though a 10 little behind in billing.</p> <p>11 That tower we intend to replace with a TTS system, 12 which is a transitional system, which is a tethered system, 13 which will increase the subscriber base substantially.</p> <p>14 And then the stratospheric system which is a system 15 that is stationed -- kept in an area covering about the size 16 of Texas, but that has not been approved by any aviation 17 regulatory agency or other. And it's pending test flights.</p> <p>18 What I know about the stratospheric system is what 19 I read in the research reports. I'm honestly a little more 20 focused on the tethered system.</p> <p>21 Q Okay. When you say "research reports," what are 22 you referring to?</p> <p>23 A Well, there was a research report independently 24 done by Crystal Research. And that described that 25 technology, and I've used that as a base somewhat, although I</p>	<p style="text-align: center;">Page 65</p> <p>1 Huntsville and the Redstone Arsenal located in Huntsville. 2 I'm not sure if that contract is still in effect. Nobody's 3 told me. I've asked. It was for \$1.8 million to purchase 4 the aerostat and to have it shipped over to Cameroon to 5 replace the interim system, which is something we're 6 desperately trying to do right now.</p> <p>7 Q Okay. And what about the stratospheric system. 8 You said that's not approved or anything.</p> <p>9 A It has only test flights. Well, we had a 10 relationship with Lockheed Martin for a short time. And, 11 again, only what I read from press releases and Lockheed and 12 StratoComm were supposed to jointly -- had a product 13 agreement which was to develop stratospheric test flights. 14 And I don't know why that contract went -- according to 15 Roger, we canceled the contract, but I've never been able to 16 verify that.</p> <p>17 Q Okay. Has StratoComm designed a stratospheric 18 system?</p> <p>19 A Well, we have intellectual property. We have -- 20 actually nobody has ever put an airship 65,000 feet -- to my 21 knowledge. Maybe military, I don't know. But nobody has 22 ever put an airship 65,000 feet to shoot a signal. It's 23 never happened. We are trying to be the first. But, again, 24 Rob Phillips and I are focused now strictly on TTS to get 25 that system up and running and create the value for the</p>

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1 Q I don't know. You tell me.
 2 A I mean --
 3 Q You also have before you Exhibit No. 58.
 4 A Yeah. It's very comparable, but they're -- Item 58
 5 I've seen.
 6 Q Okay. When did you see Item 58?
 7 A Three days before it was printed.
 8 Q And is this the research report that you referred
 9 to a little while ago?
 10 A Yes.
 11 Q Okay. Have you ever given a copy of Exhibit 58,
 12 the research report, to StratoComm investors?
 13 A Yes.
 14 Q Okay. How often?
 15 A All together 20 times, at the most.
 16 Q Okay. And --
 17 A Excuse me, I'm sorry. Sorry. I referred them to
 18 the site.
 19 Q You referred them to the --
 20 A To the site, yeah. I would never actually --
 21 Q To the Crystal Research website.
 22 A Yeah.
 23 Q Okay. Can you think of specific instances in which
 24 you've done that?
 25 A Eric Richmond, Dr. Bardelas, Dr. Kim. It's not the

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1 main shareholders, the people that we sold restricted stock
 2 to. Some others that could buy possibly.
 3 Q Okay.
 4 A I'm not saying just about everybody, but I used it
 5 as a selling tool.
 6 Q And when you say "used it as a selling tool," can
 7 you describe that a little bit more?
 8 A I used it to talk about it, to describe our
 9 company, and the legitimacy of our company, what we have.
 10 was an independent research report. I'm not aware of how
 11 much it cost us, although it's about \$60,000, or some stock.
 12 With this report, I had no input whatsoever from
 13 the beginning of time until now.
 14 Q Okay. When you say it's an "independent research
 15 report," what do you mean?
 16 A Independent means that they made their own opinion.
 17 Q They made their own opinion?
 18 A Oh, yeah, yeah. If you read -- I believe -- yes,
 19 if you read the last page, Ms. Lecte --
 20 Q Okay.
 21 A It's on Item 58.
 22 Q Okay.
 23 A "Legal notes and disclosures."
 24 Q Yes.
 25 A "This report has been prepared by StratoComm or the

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1 company with the assistance of Crystal Research. Based on
 2 the compensation of cash, it was \$40,000, and 300,000
 3 warrants for services or trade -- and printing costs."
 4 Q So how is that independent?
 5 A Somewhere it says -- somewhere in this report, I
 6 don't recall where, but it says that -- it's prepared by
 7 StratoComm with the assistance, but "has not independently
 8 verified such information." I misstated that, I'm sorry.
 9 Q Okay.
 10 A But I was told by Roger, again, that this was a
 11 non-biased report.
 12 Q Okay.
 13 A And to my knowledge --
 14 Q It was a non-biased report?
 15 A Oh, yeah. There's a lot of risk factors in this.
 16 Some things that, you know, some investors don't like to see.
 17 The costs are in here such as -- has passed with the Attorney
 18 General and the SEC.
 19 They put all the risk factors in. I thought the
 20 report was rather accurate. Except --
 21 Q Okay. You are pointing to Exhibit 53.
 22 Now, you've talked about 58? Do you recognize
 23 Exhibit 53?
 24 A This is a hard question to answer. Everything here
 25 I recognize because I read it in other reports, but the only

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1 time I ever saw any information without my name on it as a
 2 director of the company, was the draft of the research
 3 report, which originally I thought this was just by looking
 4 at it, because it seemed to be comparable.
 5 Q Okay.
 6 A This apparently was -- I don't know who wrote this.
 7 I guess this came from I guess Roger and the technical
 8 officers. But I had no --
 9 Q Roger and who?
 10 A I'm sorry. I mumble a little bit. Technical
 11 officers. I did not write anything in this report. No, I
 12 didn't write anything in this report, other than read them,
 13 and I'm sure a better word, go ballistic, because my name
 14 wasn't listed as a director.
 15 Q Okay. On Exhibit 53, have you ever seen parts of
 16 that document in other forms?
 17 A More than likely, yes.
 18 Q Okay. Can you describe that --
 19 A We have like a snapshot brochure, so I guess some
 20 of that is from here. A PowerPoint presentation. I'm not
 21 really -- I don't think I've ever sent anybody really a
 22 PowerPoint presentation, I don't believe in them. It's
 23 useless. And they are propaganda tools. I've seen bits and
 24 pieces of this in letters.
 25 No, I've never seen this document.

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1 Q When you refer to a "snapshot brochure."

2 A Yes.

3 Q What is that? Can you describe that?

4 A Yeah. It's one page, a one page-like "slick" that

5 we have on the company. I hate to use that word. But it's a

6 one-page like snap brochure it's called. Back and forth in

7 color and legible, and --

8 Q Heavy paper, color, that kind of thing?

9 A Yeah. I just have it electronically. I barely use

10 it.

11 Q You barely use it?

12 A I barely use it. When I sold stock and when I sell

13 stock, I would usually refer them to research reports on the

14 website. I wasn't too -- and then I would give them whatever

15 internal information I was allowed to send.

16 Q Okay. When you say "internal information," what do

17 you mean?

18 A Copies of letters, things of that nature, the

19 non-disclosure agreements and things of that nature. So I

20 didn't -- when I talked to people, I really didn't have to

21 send too much information. I would just talk to them. And

22 these are clients I've had for 15, 20 years. So they trust

23 me.

24 Q Okay. You can set aside Exhibits 58 and 53.

25 THE WITNESS: Could I ask you a question? Do you

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1 know what this is? Have you seen this before?

2 MS. LEETE: I can't answer that question, Mr.

3 Danzig.

4 MR. MERKIN: I can't answer that question.

5 I can't write on any of these things, right?

6 MS. LEETE: Right. Please don't. Please don't.

7 THE WITNESS: I won't.

8 BY MS. LEETE:

9 Q Okay. Mr. Danzig, have you personally ever owned

10 any StratoComm stock?

11 A Yes.

12 Q When?

13 A I was given one million shares December -- on or

14 around December 16, 2009.

15 Q Okay. And what did you do with those shares?

16 A I personally have 575,000 shares left.

17 Q Okay.

18 A I did an equity swap, which means during my course,

19 when I was gone, and I researched this to the best of my

20 knowledge to make sure it was legal. When I was gone, I

21 needed money. The company was not paying me. I equity

22 swapped --

23 Are you aware of what an equity swap is?

24 Q No, please explain.

25 A An equity swap is when you take free-trading --

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1 when you take restricted shares and you swap them with

2 somebody for free-trading shares.

3 Charles A [REDACTED] who is a client of mine for a very

4 long time and a close friend, swapped me 125,000 shares for

5 100,000 shares. Which I sold and reported -- we'll get into

6 that in a second -- and I reported to you and to StratoComm

7 that I sold them for around \$10,000.

8 Q When?

9 A Throughout June 9th to July, on my leave of

10 absence, from June 9th to July 15th.

11 I had a problem with that though. Just recently I

12 found out that when we sell, when an insider of a director

13 sells shares -- I've been going through quite tirade with the

14 SEC with EDGARS online, and I have the proof here. I have

15 been trying to file this -- Form 4?

16 Q Form 4.

17 A And no disrespect to the SEC, but I've gotten 10

18 pass codes, and Friday I had it all ready, all written down,

19 and I got timed out. So I have my pass code, and I've got my

20 CIK codes. But the SEC has yet to have it. That's what I'm

21 going to do tomorrow, more than likely. I tried -- I really

22 tried to get it done Friday because I realized I may have an

23 issue with that.

24 Q You produced to us a form with a handwritten

25 filled-out report.

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1 A Yes.

2 Q Yes, you did. You did.

3 A I have been trying --

4 Q Is that the form you've been trying to file?

5 A Yeah. Actually I'll do it tomorrow or today if I

6 get out in time. I want to go see if I can resolve that,

7 because I still can't file it. It's driving me crazy.

8 Q Okay. Now, you say you swapped with Mr. Atkins.

9 Was it 125,000 of your restricted shares for his

10 100,000 of his free-trading shares?

11 A Yes.

12 Q Okay. And how did you accomplish that?

13 A I wrote him a letter. He transferred the shares to

14 me through the transfer agent, and I transferred shares to

15 him through a transfer agent.

16 Q Did you exchange any cash with Mr. A [REDACTED]?

17 A Oh, no. I've never exchanged cash with any

18 clients.

19 Q It was just the shares.

20 A Yes. I have never done anything like that.

21 Q And when you got the free-trading shares, where did

22 you deposit them?

23 A Into my Raymond James account.

24 Q And you sold them through your Raymond James

25 account.

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1 Let me go a step further here, Ms. Leete.
 2 All this here, I've never seen this. This is to
 3 the company. No.
 4 Q You can set that aside, Mr. Danzig.
 5 A This I definitely did not see, because all
 6 documents -- this is opening the office in Geneva. This is
 7 the first time. I've never seen this.
 8 Was I supposed to have received this from the SEC?
 9 Q Well, we sent it to the company. And then it's up
 10 to the company to comply with the subpoena, however, the
 11 company does.
 12 A Okay. Yeah, I'm reading all the stuff about
 13 backbone, telecommunications -- the first time I've ever seen
 14 this.
 15 Q Okay. So I take it from your answer that you did
 16 not participate in any search for documents responsive to
 17 that subpoena.
 18 A Absolutely zero.
 19 Q Okay.
 20 (SEC Exhibit No. 70 was marked for
 21 identification.)
 22 MS. LEETE: Mr. Danzig, I am handing you a document
 23 that the Court Reporter has just marked as Exhibit No. 70.
 24 BY MS. LEETE:
 25 Q If you'll take a moment and look over that please.

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1 A Okay. July 8, 2009.
 2 Q Exhibit No. 70 is a seven-page document. The first
 3 page is an e-mail from Roger Shearer sent Wednesday, July 8,
 4 2009, at 10:21 a.m. to CDanzig@StratoComm.net. The second
 5 page is a letter dated July 7, 2009. Then there's several
 6 pages listing names and addresses. The last page has "Total
 7 listed, 6,083,100 shares total." That's on the last page.
 8 Have you had a moment to look over Exhibit 70, Mr.
 9 Danzig?
 10 A Yes.
 11 Q Do you recognize it?
 12 A Yes. It's been awhile.
 13 Q Okay. What is it?
 14 A It's a letter from Roger, copied to me, telling me
 15 exactly who was getting shares delivered to them that were
 16 purchased.
 17 Q Okay.
 18 A I remember it but it's not that --
 19 Q Okay. Let's go back to the first page of the
 20 exhibit for a minute.
 21 A Okay.
 22 Q I neglected to say before it's got my name at the
 23 top because I printed it from the e-mails that you produced.
 24 The address there "CDanzig@StratoComm.net."
 25 Is that you?

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1 A Yes.
 2 Q Does anybody else use that e-mail account other
 3 than you?
 4 A It's been -- that's the reason why I don't use it
 5 sometimes. It's been somebody -- I don't know who, the
 6 administrator or Roger -- has access to the e-mail account.
 7 Q Okay.
 8 A They have access. So there have been times I've
 9 gone to my mailbox and my mail has been opened without me
 10 opening it.
 11 Q Okay.
 12 A And the other reason why it's [REDACTED] which
 13 I always -- just so you know. When I got e-mails into
 14 StratoComm.net, everything defaulted to [REDACTED] so if
 15 it came to CDaniel, it went to [REDACTED]. But I didn't
 16 want anybody going through my e-mails.
 17 Q Okay. So anything sent to CDanzig@StratoComm.net
 18 got automatically forwarded to [REDACTED].
 19 A Copied.
 20 Q Copied to [REDACTED].
 21 A Uh-huh.
 22 Q Okay. And you say that on some occasions, you
 23 would go into your in-box at CDanzig@StratoComm.net and some
 24 messages had been read that you had not read?
 25 A Sometimes. I didn't go into the account too much.

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1 Q Do you know who has access?
 2 A Roger and whoever the administrator was at the
 3 time. Office managers.
 4 Q Okay. Would that be Kim Van Wormer?
 5 A Yes, she has access but any time she's accessed the
 6 account, I gave her permission. So when we were doing the
 7 search for you, I was having so many difficulties, so I gave
 8 her my pass code and I allowed her to.
 9 Q And how do you know that Roger Shearer has access?
 10 A He's the administrator.
 11 Q Oh, he's the -- okay.
 12 A Of Network Solutions.
 13 Q The administrator in the sense of like computer
 14 administrator.
 15 A Oh, he's the boss, so he's in charge of all pass
 16 codes and stuff like that.
 17 Q All right. Now, turning to the next page here.
 18 The letter dated July 7, 2009.
 19 Have you seen that before?
 20 A I remember it. I don't remember it in detail. Of
 21 course I've seen it. I don't remember reading it. But I
 22 read it but I don't remember --
 23 Q Okay. And then the group of names and addresses
 24 listed on the next several pages.
 25 A Right.

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1 Q Okay. When you say "shares that he controlled,"
 2 what are you referring to?
 3 A He was referring to Priority Access shares.
 4 Q Priority Access shares.
 5 A And for the record, Priority Access, I don't have
 6 anything to do with Priority Access.
 7 Q Okay.
 8 A Other than he told me that the shares were being
 9 sold. They would be directed. They were shares that he
 10 controlled in Priority Access. I have never collected any
 11 money from Priority Access. I didn't get involved in
 12 Priority Access.
 13 Q You've never collected any money from Priority
 14 Access?
 15 A For Priority Access
 16 Q For Priority Access.
 17 A I had nothing to do with Priority Access period.
 18 Q Okay. Did you ever sell shares that were -- sell
 19 StratoComm shares that were owned by Priority Access to
 20 investors?
 21 A The answer to that question is I don't know.
 22 Q Okay. What do you mean?
 23 A I don't know. I don't know where Roger would take
 24 the shares from. He would say -- maybe on one or two
 25 contracts, I can't recall which ones, but I'm sure there's

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1 one or two contracts that say "These shares are coming from
 2 Priority Access." But I was never really told where they
 3 were coming from. It's been somewhat of a dispute where the
 4 shares are coming from, Priority Access or the treasury of
 5 the company.
 6 Q So you would sell the shares and then Roger would
 7 decide where the shares are coming from, is that correct?
 8 A Absolutely.
 9 Q Okay. You can set that aside.
 10 (SEC Exhibit No. 71 was marked for
 11 identification.)
 12 MS. LEETE: Mr. Danzig, I am handing you what's
 13 been marked as Exhibit No. 71.
 14 BY MS. LEETE:
 15 Q If you'll take a moment and look over that.
 16 A Can I have a minute to read it?
 17 Q Of course. Take all the time you need.
 18 A This is more of a personal letter, but okay.
 19 A Okay.
 20 Q It's a pretty long e-mail, Mr. Danzig. My
 21 questions are going to be at the bottom of page 3. It may
 22 carry over to page 4.
 23 A May I read it?
 24 Q Yes, go right ahead and take all the time you need.
 25 A I'm rather angry with this letter obviously. This

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1 is one of my angry letters, upsetting letters, so I got very
 2 personal there. I apologize to the Commission. There's some
 3 stuff here that probably wasn't appropriate. But okay.
 4 Q Okay. Exhibit No. 71 is a five-page document. The
 5 first page is an e-mail from Roger Shearer sent Friday,
 6 September 18, 2009, at 12:40 p.m., to [REDACTED] Again,
 7 printed with my name at the top because I printed it from the
 8 e-mails that you produced.
 9 So, Mr. Danzig, is [REDACTED] you?
 10 A Yes.
 11 Q And is that addressed to [REDACTED]
 12 A Yes.
 13 Q And does anyone else have access to that e-mail
 14 account?
 15 A No.
 16 Q Okay. There are a couple of e-mails in the chain
 17 here. What I wanted to ask you about was, on page 3 of the
 18 e-mail, the last paragraph, the first sentence says, "There
 19 was value created by way of 15(C)211 which you implemented.
 20 What does that refer to?
 21 A 15(C)211 is when you merge a stock, your stock,
 22 common stock, they make it available for trading on the pink
 23 sheets. It was registered properly. Everything was done
 24 right. The reason why he did a pink sheet listing was for
 25 credibility purposes, to show they were a real company and

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1 actually created some liquidity, some value for the
 2 shareholder.
 3 To my knowledge, a 15(C), and I don't remember the
 4 people who did it down in Florida, but I have spoken to them
 5 several times. All the paper was done, so that I believe was
 6 done properly.
 7 Q Okay. Well, you said a merger in there somewhere?
 8 A I don't know the whole definition of a 15(C).
 9 THE WITNESS: Do you understand 15(C)211? In a
 10 merger, what you do is --
 11 BY MS. LEETE:
 12 Q You can assume that he does, but he doesn't need to
 13 answer.
 14 A Okay. Well, a 15(C)211, to my knowledge, is when
 15 you -- for lack of a better word -- register the stock to --
 16 not register, but you are able to sell the stock on the open
 17 market.
 18 And that was something that he had been planning
 19 for awhile, but we had no idea what price it was going to
 20 open up at, or what price it was going to go at.
 21 Q Were you involved in the decision to list
 22 StratoComm on the pink sheets?
 23 A Absolutely not.
 24 Q Okay. Do you know when StratoComm started on the
 25 pink sheets?

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1 A A year and a half ago, two years ago.
 2 Q The fall of 2007?
 3 A I guess so. I don't remember what it is. Honestly
 4 I don't recall the exact date. Approximately two years.
 5 Q Okay. You continue a couple of sentences down
 6 there, it says, "I didn't do all that bad going back to a
 7 shareholder list that was dead for years and pounded by Rich
 8 and Stu."
 9 What does that refer to?
 10 A We had a shareholder list. Everybody was extremely
 11 disappointed with StratoComm when I got back there in 2007.
 12 We are not allowed to solicit the open public. We are not
 13 allowed to send e-mails out. The only persons that could
 14 provide us with a source of funds that kept the company
 15 regenerated, back going, which is what I wanted to do, was to
 16 go to the existing shareholder list.
 17 The existing shareholder list -- excuse me so much
 18 for some of the language in here -- okay, I did have two
 19 glasses of wine before I wrote this. So I feel a little
 20 guilty there. But what I meant by "Rich and Stu" -- Rich and
 21 Stu were two former stockbrokers that had worked for Roger
 22 directly, and that I had consulted for. Richard Linz and Stu
 23 Miller. Very bad guys. And they took the shareholder list
 24 from StratoComm and they, for lack of better words,
 25 prostituted all over the place.

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1 Why I left Roger in --
 2 Q What do you mean by that?
 3 A They just took it and sold them anything they could
 4 sell them. I understand they -- I don't know what issues
 5 they have, but they were very -- they mistreated Roger, and
 6 very unfair to StratoComm.
 7 Q You mean they sold other securities or StratoComm
 8 securities?
 9 A They took the StratoComm I'm sure. I don't know.
 10 When I got there, they weren't doing anything. What they did
 11 with Roger between 2000 and 2004, I don't know all the
 12 stories, but I know that they had access to our shareholder
 13 list. When they left Roger, they took the shareholder list
 14 and would sell them anything they could sell.
 15 Q Okay.
 16 A When I left Roger, I gave him a commitment that I
 17 wouldn't call any shareholders of his. I wouldn't and I
 18 never did. I didn't bother anybody. I didn't bring them to
 19 any deals. I played by the rules.
 20 When I came back, the 15(C)211 provided some source
 21 of liquidity for some shareholders, and I had never told any
 22 shareholders to sell stock or buy stock. That's their
 23 decision. I wouldn't tell them to sell their stocks to buy
 24 StratoComm stock. My projections were it could go up, it
 25 might go up, it would hopefully go up. But as far as

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1 "pounding," what it means here, Rich and Stu took that
 2 shareholder list and they just annihilated it.
 3 And, of course, I stopped that, but contacting
 4 people, it was a battle for StratoComm. Basically -- I
 5 didn't say this at the time, because they were just
 6 obliterating the stock.
 7 Q You said, "When I came back to StratoComm."
 8 From where?
 9 A Well, I consulted for U.S. African Ventures.
 10 Q Early in the decade.
 11 A Yeah. And when I came back, I came back and -- I
 12 came back for the purposes of -- I believed in Roger. I
 13 believe in -- I still believe in the technology.
 14 As you know, there's been a change in management.
 15 I'm not being sour on Roger. It just sort of kind of
 16 happened.
 17 Q Over on page 4 of Exhibit No. 71, the third and
 18 fourth sentences. "I'm calling everybody in Philly and
 19 reaching out. The doctor sounded very enthusiastic to say
 20 the least." What does that refer to?
 21 A Okay. This is a good question. Dr. K [redacted] as you
 22 know, is a big investor in the company. And he's a real
 23 great guy. He's someone I contact to label him as the savior
 24 of StratoComm.
 25 Eric R [redacted] who was a shareholder I've known

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1 since 1998. When I got back into the picture, Eric was
 2 ecstatic, and said, "Oh, thank God you're back." "Do you
 3 know anybody I could recommend?" and he recommend Robe
 4 C [redacted] and then Robert C [redacted] recommended Dr. K [redacted] in New
 5 Jersey.
 6 I met with Dr. K [redacted]. He was awfully credible,
 7 extremely intelligent. And he's been very, very, very
 8 helpful with StratoComm and where it is right now. He calls
 9 me everyday.
 10 Q Okay. This time here -- let's see, the e-mail is
 11 September 18, 2009. Is that when you first made contact
 12 with -- on or about --
 13 A Late summer.
 14 Q Late summer 2009?
 15 A Yes.
 16 Q You first made contact with Mr. K [redacted]
 17 A I've known him just about a year, yes.
 18 Q Okay. You can set that aside.
 19 (SEC Exhibit No. 72 was marked for
 20 identification.)
 21 MS. LEETE: Okay. Mr. Danzig, I am handing you a
 22 document that's been marked as Exhibit No. 72.
 23 BY MS. LEETE:
 24 Q If you'll take a moment and look at that.
 25 A This was approximately a year ago.

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1 Q Yes, you can set that aside.
 2 (SEC Exhibit No. 74 was marked for
 3 identification.)
 4 MS. LEETE: Mr. Danzig, I am handing you a document
 5 the Court Reporter has marked as Exhibit 74.
 6 BY MS. LEETE:
 7 Q Take a moment and look over that.
 8 A Okay.
 9 Q Mr. Danzig, have you had an opportunity to look
 10 over Exhibit No. 74?
 11 A Yes.
 12 Q Do you recognize it?
 13 A Yes.
 14 Q I should say it's a one-page exhibit, my name at
 15 the top, from Roger Shearer, sent Thursday, November 5, 2009,
 16 at 1:48 p.m., to Kee Haskins and Craig Danzig.
 17 Okay. What is it?
 18 A It's a letter stating that he was having problems
 19 getting the stock to trade.
 20 Q Okay. Who is Kee Haskins?
 21 A Kee Haskins was a stockbroker who was recommended
 22 to me by Charles A [REDACTED], who we called "Charles Pink." He's
 23 a very good friend and a good client of mine.
 24 Q I'm sorry. You called Charles A [REDACTED] "Charles
 25 Pink"?

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1 A Yes. No, we call him "Pink."
 2 Q Oh, you call him "Pink." Okay.
 3 A [REDACTED] I've been to
 4 his house. I've met his family. Had the pleasure to golf
 5 with him.
 6 He was introduced to us. He didn't really do
 7 anything for us. He couldn't get it done, but he was
 8 frustrated, and he was trying to have stocks that were free
 9 trading put into Scottrade. The problem that he was having,
 10 like a lot of other companies right now with the SEC - I
 11 don't know if you're familiar with this - has passed a
 12 ruling that the pink sheet companies have to - needed more
 13 paperwork of where the stock had come from.
 14 I was told there was a lawsuit between pink sheets
 15 and the SEC over this stuff. I have not verified that. But
 16 there are a lot of companies out there that won't take pink
 17 sheet stocks unless we provide them with a private placement
 18 memorandum or a copy of the restricted note. And it was an
 19 unbearable amount of work for us. And we still have it, it's
 20 still there.
 21 So I'll recommend to somebody, "Find another
 22 stockbroker who will take it." Because ETrade won't take it.
 23 Scottrade does take it. Raymond James takes it. A lot of
 24 people don't take it because of its pink sheet. Not because
 25 it's improperly issued stock, because they want proof of how

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1 the stock's done.
 2 Q Okay.
 3 A So you can buy and sell it through ETrade, but you
 4 can't put certificates in, which doesn't make any sense to me
 5 at all.
 6 Q Okay. But you said Scottrade will accept the -
 7 A Some do. Some branches do and some don't.
 8 Q Okay.
 9 A It's been a big problem for us.
 10 Q And you said Raymond James, some do and -
 11 A To my knowledge. They took my stock. I have a
 12 relationship with them.
 13 Q Okay. Now, if you read there in the message from
 14 Kee Haskins to you and Mr. Shearer there that was dated
 15 Thursday, November 5th at 1:41 p.m. The middle of that
 16 paragraph there, it says, "The problem is that the DTC has
 17 listed the stock as non-transferrable. Just talked to
 18 Florida Atlantic Transfer about the problem. They don't feel
 19 that it's their problem. Will not call the DTC."
 20 Do you know what that's all about?
 21 A DTC is the way of transferring stock
 22 electronically. And Florida Atlantic never had the ability
 23 to do that. Pacific does, that's why I was so happy with
 24 them. He is not the sharpest guy in the world, to be honest
 25 with you. So he didn't understand what he was talking about.

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1 What he spoke to Florida Atlantic Transfer is that
 2 they don't want to get involved in all this paperwork, and
 3 they are rightfully so I think. That's just my opinion. I'm
 4 not here to say the SEC or the pink sheets are right. But
 5 that's an enormous amount of work that the pink sheet
 6 companies have to do now is to supply all this information to
 7 prove how someone owned the stock to a private transaction.
 8 It's just a lot of paperwork and the brokerage firms don't
 9 want to do it.
 10 And the transfer agents don't do it, and it's left
 11 now to the issuer, which is us. So it's been a lot of
 12 paperwork, kind of getting back to the dysfunctionality of
 13 things. That's nothing we got with it. It's not just us.
 14 It's all the pink sheet companies to my knowledge. A lot of
 15 brokerage houses are not taking pink sheet stocks because of
 16 this problem, unless they have verified proof that the stock
 17 is not a counterfeit certificate.
 18 Q Okay.
 19 A Which we don't do anything like that.
 20 Q Now, when you say here, "The problem - " I mean
 21 you don't say, I'm sorry. The e-mail written by Mr. Haskin
 22 says, "The DTC has listed the stock as non-transferrable."
 23 Do you know specifically what he's talking about?
 24 A I have no idea what he's talking about. Maybe that
 25 they - well, what he's saying is, I don't know what he means

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1 by the DTC and how he came about this, because he fully
 2 didn't understand this. He told me that the transfer agents
 3 needed a private placement memorandum, is that there was no
 4 private placement memorandums, so there is no private
 5 placement.
 6 What they need is a one-page restriction letter and
 7 a copy of their check or wire instructions and that would
 8 suffice. And it's been -- you know, anybody else that's
 9 called me has gotten through it. But it's a lot of work.
 10 Q Okay. Well, you just referred to a one-page
 11 restriction letter. What's that?
 12 A Well, we have -- well, any time when somebody
 13 bought stock, I'd give them a letter saying this is what they
 14 wanted the stock at, and it would be delivered in 30 to 45
 15 days. And I was directed to do that by Roger.
 16 Q Okay. And that's the restriction letter --
 17 A Yes. That's the main thing, the main play you use
 18 to sell the stock.
 19 Q Okay. And you also said that StratoComm does not
 20 have a private placement memorandum, is that true?
 21 A We are working on one. We don't do it. We're
 22 trying to get it written up, we're in the process. I have
 23 never told -- I've told people we're planning on doing one
 24 and have not talked about numbers or any issues out there,
 25 but we're working on one.

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1 Ray Lasky is doing his job. Rob is doing the
 2 business model, and then when it comes to the stock, where
 3 it's going to come from and how it's going to be issued is
 4 the last thing.
 5 Q Okay. When I first asked you who Kee Haskins is,
 6 you said something to the effect of "He's never done much for
 7 us."
 8 A No.
 9 Q What do you mean by that?
 10 A Well, he was -- we have a lot of shareholders, Ms.
 11 Leete, that don't know how to trade stock or don't know where
 12 to bring their stock. They are somewhat lost. So as a
 13 courtesy to them, I will talk to them and say, "Well, you
 14 know, you might want to go to ETrade."
 15 I can't tell them when to buy and sell their stock,
 16 as I told you, I never have. I can't tell them to sell
 17 securities. But if they ask me for a broker, I can
 18 recommend. We were looking for one for a long time. One
 19 that was credible and one that would call them and say, "Sell
 20 StratoComm," and do this. We were trying to find somebody
 21 with credibility. It's very hard out there.
 22 So Pink recommended him. We went to meet him.
 23 Roger and I went out -- I think Roger flew in and we met him.
 24 Seemed like a nice guy, but he wasn't too sharp on the
 25 information. He just didn't get it.

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1 So Pink basically told me, he's not cutting the
 2 mustard, and, you know, and I just stopped -- we gave him 10
 3 accounts to inherit. We have thousands of people that don't
 4 know what to do.
 5 Q Uh-huh.
 6 A And so we want to find -- we still haven't found
 7 somebody to give them our shareholder list and say, "Here,
 8 here's our shareholder list. Help us. You know, do the
 9 investor relations, do this PR work, whatever you want to
 10 do." We haven't found that yet.
 11 Q And how did Mr. A [redacted] or Pink know Mr. Haskins?
 12 A He's a stockbroker.
 13 Q Okay. You can put aside No. 74.
 14 (SEC Exhibit No. 75 was marked for
 15 identification.)
 16 MS. LEETE: Mr. Danzig, I'm handing you another
 17 e-mail, this one marked as Exhibit No. 75.
 18 BY MS. LEETE:
 19 Q Take a couple of minutes and look over that.
 20 Mr. Danzig, have you had a minute to look over
 21 Exhibit No. 75, which is a two-page document, an e-mail with
 22 my name at the top, from Roger Shearer sent Monday, November
 23 9, 2009, at 4:19 p.m., to CDanzig@StratoComm.net?
 24 A Yes.
 25 Q Have you seen it before?

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1 A Yes.
 2 Q What is it?
 3 A These were shares that were pending delivery.
 4 Q Okay. What do you mean "pending delivery"?
 5 A Well, they are shares that were paid for and shares
 6 that were due to people. And I wanted a list of people,
 7 because these people, I had either called them and told them
 8 the shares were coming, or people were calling in complaining
 9 they hadn't gotten their shares yet.
 10 Q Okay.
 11 A It's an order that he ultimately, I believe, sent
 12 to the transfer agent.
 13 Q Okay. If you look down the left-hand side, about
 14 halfway down the page there, BSL Group, LLC.
 15 Who is that?
 16 A Dan Berry.
 17 Q Dan Berry.
 18 A I believe.
 19 Q Okay. Who is Dan Berry?
 20 A Dan Berry is an investment banker, very credible
 21 guy. I'm somewhat friendly with him. And he tries to
 22 support our stock with his clients, bringing it to
 23 StratoComm.
 24 Q Okay. What do you mean by that?
 25 A Well, he has a group of investors he talks to, and

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1 I'm going to be straight with you. When you ask me
 2 a question, I'm going to tell you what it's for.
 3 Performance. My contract was all based on
 4 performance on how much money I would raise. He didn't want
 5 to ever define it as commissions. He defined it as
 6 discretionary bonuses, and I accepted that.
 7 Q If you'd turn to the next page. It's hard to read.
 8 But the date on that is February 17, 2010.
 9 A That's the one that we're now disputing, the
 10 \$50,000, whether or not it's --
 11 Q It's \$50,000 cash deposited.
 12 A Well, I don't think it's cash, because it's
 13 impossible for him to deposit cash. I know for a fact this
 14 was done with a check. There is no way he deposited cash.
 15 It's impossible.
 16 Q How do you know for a fact that it was done with a
 17 check?
 18 A Because how's he -- because he told me he did a
 19 check. Or a transfer. These may have been wire transfers.
 20 Because there is no way this was done with cash. I don't see
 21 how he could possibly -- if he did, I don't know where he got
 22 the cash from. But there's no way this was done in cash.
 23 I'm pretty sure --
 24 I don't know if you guys -- I'm not being
 25 disrespectful. But I think you guys maybe are reading that

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1 you see cash on the ticket, and it may be done as -- I don't
 2 think Roger went to the bank and gave them \$50,000 cash. I
 3 would seriously doubt that. He would never do something like
 4 that.
 5 So I think that's -- I mean it's a wire or that was
 6 done with a banker teller check or a transfer. See Roger has
 7 the ability to transfer -- if this is a bank invest, he has
 8 the ability to transfer money from one account to another.
 9 There is no way that he had \$50,000 -- that he went to the
 10 bank with \$50,000 in cash. Nor would I accept that.
 11 Q Okay. But it is your testimony that you didn't
 12 know how he --
 13 A I have no idea.
 14 Q -- how he was doing it.
 15 A I am assuming -- and hopefully that he did it via
 16 check or transfer, but I would seriously doubt he would go to
 17 the bank with \$50,000 in cash.
 18 Q Okay.
 19 A And take such a risk like that. I don't think he
 20 would do that.
 21 Q Okay. What do you mean "take such a risk like
 22 that"?
 23 A Well, that would be -- to my knowledge, and I'm not
 24 a banking expert per se on deposits, but when you start to
 25 move cash around like that, \$10,000 or more, I know the

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1 rules. Even if it's a thousand dollars, by the way, Ms.
 2 Leete, it's still reportable.
 3 I seriously think that Roger wouldn't put cash in
 4 my account. I still think that was done either wire
 5 transfer -- and like I say, you might find out faster than
 6 me, but I will find out tomorrow. I'll actually ask him,
 7 "How were those --" To my knowledge, everything he does
 8 with a check, unless it's small money.
 9 Q Okay. If you look on the next page there, 3137.
 10 A The next page?
 11 Q Yeah, the next page. That appears to be a check
 12 deposited of \$5515.
 13 Do you see that?
 14 A That's my payroll.
 15 Q That's your payroll.
 16 A He finally got it right once. They got it right.
 17 Q Okay. Is that the net amount of your payroll,
 18 \$5015.90?
 19 A \$5512 or \$5015, yes. That's my net for every two
 20 weeks, that's what I take home.
 21 Q Okay. You can set aside Exhibit 91.
 22 A As part of my testimony, I spent a lot of money --
 23 I spent a lot of money in dental, and it didn't work out too
 24 well. I spent close to -- I have a lot of bridges, almost
 25 four of them, and you can see my dentist is color blind. Some

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1 of these are light and some of these didn't turn out too well
 2 for me, so I'm very upset and my teeth are killing me right
 3 now. So that's why I wrote that. I spent quite a lot of
 4 money on dental.
 5 (SEC Exhibit No. 92 was marked for
 6 identification.)
 7 MS. LEETE: Okay. Mr. Danzig, I am handing you
 8 what's just been marked as Exhibit No. 92.
 9 If you'll take a moment and look at that.
 10 BY MS. LEETE:
 11 Q Exhibit No. 92 is a series of transaction detail
 12 reports, Bates number CITZ3276 through 3305.
 13 A Okay.
 14 Q Have you had a chance to look through this quickly
 15 A Yes. Go ahead.
 16 Q Okay. They appear to be wire transfers in and out
 17 of your bank account.
 18 A Yes.
 19 Q This first page here, \$2500 wire from Dr. E [REDACTED]
 20 on June 22, 2010.
 21 What was this for?
 22 A Bills, teeth. This was money he sent me. I
 23 actually owe him \$15,000.
 24 Q You owe him \$15,000?
 25 A Uh-huh.

Page 234

1 Q He's loaned you individually --

2 A Tony's a very good friend, a long-time friend of

3 mine.

4 Q Personal side loan of --

5 A Yes, it has nothing to do with StratoComm. He's a

6 very close friend of mine and he worries about my

7 health and stuff, so he's been very, very hands on.

8 Q I take it from your testimony today that you owe

9 money to various people.

10 A Not that much anymore. I owe money to Tony

11 B [REDACTED] I've paid off most of my debts that I owed over

12 the years. I incrementally pay bills, like an allotment.

13 Q Do you keep track anywhere, like a chart or a

14 notebook or anything, the money you owe people?

15 A No.

16 Q If you'd turn to page 3279.

17 A Okay.

18 Q I'm sorry. What I said before, the money from Dr.

19 B [REDACTED], I think I said June 22, 2010. And that was wrong.

20 That's the run date. I believe the date that this report was

21 printed.

22 If you look -- just to make sure the record is

23 cleaned up, on the first page there, "SND date," send date.

24 A Right.

25 Q I believe that's 08/10/07.

Page 235

1 A Yes.

2 Q So October 7, 2008.

3 Is your answer the same about the \$2500 wire from

4 Dr. B [REDACTED]

5 A Yes. It was done several years ago.

6 Q Okay. Then on page 3279, March 24, 2010, a \$5000

7 wire from Maureen B [REDACTED]

8 A There were a series of wires, and that was my money

9 that she was holding.

10 Q That's the return of the money that we saw --

11 A I'll add up to exactly what was in the check. She

12 kept a very solid record of that.

13 Q Okay.

14 A She was very -- [REDACTED]. They

15 are very, very detailed. And I explained to her what was

16 going on with this, and she said, "Why are you doing this?"

17 "Nothing's wrong. You've held my money, send it back it me."

18 But we have done no transactions, nor does the stock that

19 they still have possession of have anything to do with this.

20 It's a gift and I love them and care about them.

21 Q Okay.

22 A And that's why they gave it to me.

23 Q The next page 3280 is a \$10,000 wire from March 25,

24 2010, from Maureen B [REDACTED]

25 A Same thing.

Page 236

1 Q Same thing?

2 A Yes. I'll add up to whatever the \$28,000 plus

3 the -- I don't remember, we just talked about it, \$28,000

4 plus 13 -- somehow it came up to 40.

5 Q Okay. If I asked you the same question for all the

6 wires from Maureen --

7 A All of them.

8 Q Okay. If you'd turn to page 3292.

9 A Okay. Dr. B [REDACTED]

10 Q Okay.

11 A That's part of -- I think it's the \$2000. It could

12 be 10, 12. He hasn't asked me to repay that. He just asked

13 me to pay me back --

14 Q Well, that seems to be -- as I look at it, it looks

15 like the same transaction. It's got the same transaction

16 number, so I'm not sure what that is. That may not be a

17 separate -- that may be the same transfer that we've already

18 talked about. It's also got a date of October 7, 2008, on

19 it.

20 A Okay.

21 Q Do you know how much money -- I think you said you

22 owe him \$15,000 --

23 A Ten, 15 --

24 Q Have you paid anything back to Dr. B [REDACTED]

25 A No, he doesn't ask me for it back.

Page 237

1 Q Okay.

2 A I told him -- he said, "When StratoComm gets

3 healthy and you get healthy, pay me back." He's like a

4 father. I'm very, very close with him. I talk to him

5 everyday.

6 Q You talk to him everyday.

7 A Everyday. Almost everyday.

8 Q How did you meet him?

9 A I met him in 1998. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q Okay. If you look at page 3293.

15 A Okay. This is when I sold those stocks. I believe

16 I sold \$8000 worth of stock.

17 Q Okay. This Lloyd McClellan wire is when you sold

18 the stock?

19 A Yes.

20 Q Okay.

21 A I sold -- yeah, was it McClellan? Yes. It was

22 Mike McClellan.

23 Q Okay. So you sold stock directly --

24 A This was a loan, this was a loan. This wasn't a

25 stock sale, this was a loan.

MSJ Ex. 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CASE NO. 1:11-cv-1188 (TJM/DRH)

STRATOCOMM CORPORATION,
ROGER D. SHEARER, and
CRAIG DANZIG,

CRAIG DANZIG'S ANSWER
AND AFFIRMATIVE DEFENSES
JURY TRIAL DEMAND

Defendants.

Defendant, Craig Danzig, by and through counsel, hereby answers Plaintiff's Complaint in the above-referenced matter, as follows:

1. As to paragraph 1, Danzig admits that this paragraph sets forth Plaintiff's stated basis for relief, but denies the allegations set forth as to him; Danzig lacks sufficient information to form a belief as to the truth of the remaining allegations therein, and therefore denies same.
2. As to paragraph 2, Danzig admits that some investors purchased StratoComm stock; Danzig lacks sufficient information to form a belief as to the truth of the remaining allegations therein, and therefore denies same.
3. Paragraph 3 contains legal conclusions and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

4. Paragraph 4 contains legal conclusions and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
5. Paragraph 5 contains legal conclusions to which no response is necessary; as to the factual allegations, Danzig admits that he did not register as a securities broker, but denies that he was required to do so or that by not registering as such he violated any rule or regulation. Danzig denies the remaining factual allegations contained in paragraph 5.
6. As to paragraph 6, Danzig admits that it sets forth the relief sought by Plaintiff, but denies that Plaintiff is entitled to any such relief from him.
7. As to paragraph 7, Danzig admits that it sets forth Plaintiff's stated basis for jurisdiction over this matter, but denies that he has engaged in any offense or violation of the Securities Act of 1933 or the Security Exchange Act of 1934.
8. As to paragraph 8, Danzig admits that it sets forth Plaintiff's stated basis for proper venue in this District, but denies that he has engaged in any violation of the Securities Act of 1933 or the Security Exchange Act of 1934.
9. Paragraph 9 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 9 as they relate to him.

10. Paragraph 10 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
11. Paragraph 11 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
12. Paragraph 12 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
13. Paragraph 13 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is an administrative order as alleged in Paragraph 13, said order speaks for itself (although Danzig does not admit the truth of anything contained in said administrative order).
14. Paragraph 14 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
15. As to paragraph 15, Danzig admits that he was employed by StratoComm from in or about 2007 until in or about November 2010; admits that he was initially given the title "Director of Investor Relations" and later "Executive Director of Institutional Relations," but denies any implication that by virtue of

these titles Danzig held any actual authority over StratoComm. Danzig admits that he is a resident of Boca Raton, Florida.

16. As to paragraph 16, Danzig admits the allegations contained in the first two sentences and the last sentence. As to the allegations contained in the third sentence, Danzig asserts that he consented to not seeking a license to sell securities in New Jersey in or about 1996.
17. Paragraph 17 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
18. Paragraph 18 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
19. Paragraph 19 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
20. Paragraph 20 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
21. Paragraph 21 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
Danzig denies the allegations of paragraph 21 as they relate to him.

22. Paragraph 22 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 22, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).
23. Paragraph 23 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 22, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).
24. Paragraph 24 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
25. Paragraph 25 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 25, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).

26. Paragraph 26 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 25, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).
27. Paragraph 27 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
28. Paragraph 28 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is an Executive Overview as alleged in Paragraph 28, said Executive Overview speaks for itself (although Danzig does not admit the truth of anything contained in said Executive Overview).
29. Paragraph 29 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is an Executive Overview as alleged in Paragraph 28, said Executive Overview speaks for itself (although Danzig does not admit the truth of anything contained in said Executive Overview).

30. Paragraph 30 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is an Executive Overview as alleged in Paragraph 28, said Executive Overview speaks for itself (although Danzig does not admit the truth of anything contained in said Executive Overview).
31. Paragraph 31 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 31 as they relate to him. Additionally, Danzig asserts that if there is an Executive Overview as alleged in Paragraph 28, said Executive Overview speaks for itself (although Danzig does not admit the truth of anything contained in said Executive Overview).
32. Paragraph 32 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
33. Paragraph 33 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 33, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).

34. Paragraph 34 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Additionally, Danzig asserts that if there is a press release as alleged in Paragraph 33, said press release speaks for itself (although Danzig does not admit the truth of anything contained in said press release).
35. Paragraph 35 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
36. As to paragraph 36, Danzig admits that he was employed by StratoComm from in or about 2007; admits that he was initially given the title "Director of Investor Relations" and later "Executive Director of Institutional Relations," but denies any implication that by virtue of these titles Danzig held any actual authority over StratoComm. Danzig denies the categorization of his actions as "aggressive," and denies marketing StratoComm's stock to potential new investors, but admits marketing StratoComm stock to existing shareholders.
37. Danzig denies the allegations contained in paragraph 37; he does not recall the specific emails listed, but asserts that those emails speak for themselves (although Danzig does not admit the truth of anything contained in said emails).
38. As to paragraph 38, Danzig admits being paid a salary plus a bonus, but denies that the bonus was determined as alleged in the Complaint. Danzig

admits that he did not register as a broker or become associated with a registered broker, but denies that he was required to do so.

39. Paragraph 39 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

40. Paragraph 40 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

41. Paragraph 41 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

FIRST CLAIM FOR RELIEF

42. Danzig re-alleges and his responses to paragraphs 1 through 41, *supra*, and incorporates same herein by reference.

43. Paragraph 43 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 43 as they relate to him.

44. Paragraph 44 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations,

and therefore denies same. Danzig denies the allegations of paragraph 44 as they relate to him.

SECOND CLAIM FOR RELIEF

45. Danzig re-alleges and his responses to paragraphs 1 through 44, *supra*, and incorporates same herein by reference.
46. Paragraph 46 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
47. Paragraph 47 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

THIRD CLAIM FOR RELIEF

48. Danzig re-alleges and his responses to paragraphs 1 through 47, *supra*, and incorporates same herein by reference.
49. Paragraph 49 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
50. Paragraph 50 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he

lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

51. Paragraph 51 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.

FOURTH CLAIM FOR RELIEF

52. Danzig re-alleges and his responses to paragraphs 1 through 51, *supra*, and incorporates same herein by reference.
53. Paragraph 53 contains conclusions of law and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same.
54. Paragraph 54 contains presumptions based upon matters that have not been proven or admitted, conclusions of law, and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 54 as they relate to him.
55. Paragraph 55 contains presumptions based upon matters that have not been proven or admitted, conclusions of law, and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he

lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 55 as they relate to him.

FIFTH CLAIM FOR RELIEF

56. Danzig re-alleges and his responses to paragraphs 1 through 55, *supra*, and incorporates same herein by reference.
57. Paragraph 57 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 57 as they relate to him.
58. Paragraph 58 contains allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 58 as they relate to him.
59. Paragraph 59 contains presumptions based upon matters that have not been proven or admitted, conclusions of law, and allegations relating to the conduct of others; to the extent that a response is required of Danzig, he lacks sufficient information to form a belief as to the truth of these allegations, and therefore denies same. Danzig denies the allegations of paragraph 59 as they relate to him.

SIXTH CLAIM FOR RELIEF

60. Danzig re-alleges and his responses to paragraphs 1 through 59, *supra*, and incorporates same herein by reference.
61. Danzig denies the allegations of paragraph 61.
62. As to paragraph 62, Danzig admits that he was not registered as a broker and was not associated with a registered broker, but asserts that he was not required to be so registered or associated.
63. Paragraph 63 contains presumptions based upon matters that have not been proven or admitted, and conclusions of law; to the extent that a response is required of Danzig, he denies same.
64. Danzig denies all allegations in the Complaint not specifically admitted herein.

PLAINTIFF'S PRAYER FOR RELIEF

Danzig denies that Plaintiff is entitled to any of the relief sought in its unnumbered paragraph on page 15 of its Complaint, or in any of the sub-parts (A) through (H) thereof.

DANZIG'S AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As and for his First Affirmative Defense, Danzig asserts that any actions he took were taken on advice of counsel.

SECOND AFFIRMATIVE DEFENSE

As and for his Second Affirmative Defense, Danzig asserts that any actions he took were taken based upon the reliance on others.

THIRD AFFIRMATIVE DEFENSE

As and for his Third Affirmative Defense, Danzig asserts that his actions were exempted and entitled to safe harbor under the law.

FOURTH AFFIRMATIVE DEFENSE

As and for his Fourth Affirmative Defense, Danzig asserts that his actions were taken without the required scienter.

FIFTH AFFIRMATIVE DEFENSE

As and for his Fifth Affirmative Defense, Danzig asserts that he was unable to form the requisite intent due to incapacity.

SIXTH AFFIRMATIVE DEFENSE

As and for his Sixth Affirmative Defense, Danzig asserts that he had no authority over the statements alleged in the Complaint to be false or fraudulent.

RESERVATION OF RIGHTS

Danzig reserves the right to amend and/or supplement his Affirmative Defenses as may become appropriate.

DEMAND FOR JURY TRIAL

Danzig hereby demands a trial by jury on all matters so triable.

DATED: February 6, 2012

Respectfully submitted,

Malman, Malman & Rosenthal
3107 Stirling Road, Suite 101
Fort Lauderdale, Florida 33312-8500
Tel. 954-322-0065
Fax. 954-322-0064
Email: myles@malman.com

By: s/ Myles H. Malman
Myles H. Malman
NDNY Bar Roll No. 517307

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to those listed below.

By: s/ Myles H. Malman
Myles H. Malman

SERVICE LIST

H. Michael Semler, Esquire
Securities and Exchange Commission
Division of Enforcement
101 F Street, N.E.
Washington, D.C. 20549
Email: semlem@sec.gov
Counsel for Plaintiff
Via CM/ECF Notification

E. Stewart Jones, Jr., Esquire
██████████
Troy, New York ██████████
Email: bessetca@esjlaw.com
Counsel for Defendants StratoComm Corp.,
and Roger D. Shearer
Via CM/ECF Notification

MSJ Ex. 26

From: [REDACTED] <[REDACTED]>
Sent: Thursday, March 11, 2010 4:14 PM
To: rshearer@stratocomm.net
Subject: Fw: Stock purchases

Robert Bowen

[REDACTED]
Cathedral City, CA 92234

tel [REDACTED]

— Forwarded Message —

From: [REDACTED] <[REDACTED]>
To: Bob Bowen <deariebob@inbox.com>
Sent: Wed, March 10, 2010 11:10:47 AM
Subject: Re: Stock purchases

All shares on there way...

From: Bob Bowen [REDACTED] >
To: rshearer@stratocomm.net
Cc: [REDACTED]
Sent: Wed, February 10, 2010 2:08:03 PM
Subject: Stock purchases

I purchased from stratocomm 200,000 shares on 12-17-2008, 400,000 shares on 1-7-09, and 200,000 shares on 3-10-09. I received the 2 certificates purchased on 12-2008 and 3-2009 in the same envelope and to this date i still have not received the 400,000 shares that i purchased on 1-7-2009. Since the stock purchase has now been over 1 year, please issue the 400,000 shares as a common stock without the restriction. I have attached the copy of my check that i purchased the 400,000 shares with in the amount of \$10,000 and the other \$10,000 was sent by wire transfer. I have also attached the correspondence from Craig with the option to purchase the same amount of stocks that i have purchased at a purchase price of .05 per share. The first stock that I purchased on 12-17-2008, I had talked with craig by phone and he said the if i purchased the 200,000 shares that the certificate would have an option to purchase the same amount in the future at .05 per share but the email that he sent does not mention the option. I just asumed that that option was attached to the certificate, which it is not. I would like to purchase all the options on my purchases for a total of 800,000 shares within the next month or so as soon as i can finish all my tax work. You can reach me by phone at home untill 3-14@[REDACTED]. I will be on my cell phone after that date at [REDACTED]. Thanks for your prompt handling of this matter. Robert E. Bowen.

SEC-Shearer-E-0011470

MSJ Ex. 32

From: [REDACTED] <[REDACTED]>
Sent: Saturday, October 31, 2009 12:52 AM
To: rshearer@stratocomm.net
Subject:

Roger,

Hope you had a good evening,,,rough week, lots of no's but then cme the yes's.

Regarding tonight, I can assure you that I didnt fabricate this private call...it was very real, kinda scary and concerning to,,,what motive would i have,,,you paying me my 4,500 tomorrow...our relationship is better than that, on the other please make that happen, every paycheck has a short fall lately, please take care of that tomorrow, i really need it to make my move and I'm still leaving plenty on the table. If didnt get this done i wasnt getting paid, there was no money,so please do the right thing and keep me happy. i would appreciate that very much.

Ok, to business. I've promise a lot of people Cameroon. i've raised over 500K since I moved to arkansas. Not a whole lot of money in four months, but it was the best I can do with limited shareholder list, our past problems and a rough environment. I trust that you raised money as well, at least 200 I would presume, so im not really sure mwhy we cant get to Cameroon and get that system up. Everything changes once we do...Dr Kims people are ready once we get it up!!

I dont ever question your schedule, but you mentioned you were going to Alabama.my guess is huntsville and bosch..if so, why? why waste time there, the deal probably makes sense for Sc, but not now, we have no money, and no product, so why bother, it costs money to go there, and it takes days to commute and leave. Switzerland, Madagascar, libya, turk.....all these plans and hopfully sometthing someday, but to date just meetings. I have to constantly defend those actions...actions i am anot reponsible for.

You should be strictly focused on **Cameroon** as I am. People dont care about Alains of the world, your investor groups, which turn up nothing..not your fault, they're playing you, or you arent being straight with me. Either is not good.

I want to get into system sales as promised. I want to be done with fund raising. Its not the direction I want to go in and i dont want to start exploring other opportunities as i beleive in you.

Please give me a date of when you plan on going to Cameroon and how much we need in by friday of next week.

I'm really trying to help you here. Ive been supportive and understanding, but the pressure is getting to me.

Call me

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

1:11-CV-1188

**STRATOCOMM CORPORATION,
ROGER D. SHEARER, and
CRAIG DANZIG,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This is a civil enforcement action brought by the Securities and Exchange Commission (“the SEC” or “the Commission”) against StratoComm Corporation (“StratoComm”), Roger D. Shearer (“Shearer”) and Craig Danzig (“Danzig”). The Commission asserts that the defendants committed securities fraud and registration violations in the offer and sale of StratoComm penny stock. In this regard, the Commission contends that StratoComm, under the control of Shearer and with the assistance of Danzig, disseminated fraudulent public statements designed to portray StratoComm as a successful company that had developed, manufactured and sold sophisticated telecommunications equipment for tens of millions of dollars. However,

the Commission asserts that the undisputed facts reveal that StratoComm had no products, no paying customers, and no revenues; and that its very existence depended on its ability to sell its securities to investors. The Commissioner further asserts that StratoComm disseminated fraudulent statements to the public in three press releases and a marketing document posted on the internet and distributed to potential investors. During this same time period, the defendants sold millions of shares of StratoComm's stock to over 100 investors. Yet, StratoComm's stock offering was not registered as required by law. In addition, Danzig, who was in the forefront of selling StratoComm's stock, was not registered as a broker.

The Commission moves for partial summary judgment on the issue of liability for each of its claims. StratoComm and Shearer have opposed the motion, but Danzig, who is proceeding *pro se*, has failed to submit any opposition. The Commission has also submitted reply papers. The Court has considered all of the submitted papers in reaching its decision on the pending motion.

II. BACKGROUND¹

a. StratoComm Corporation

StratoComm Corporation ("StratoComm") is a Delaware corporation that was incorporated in 1997. It describes itself as being in the business of designing, manufacturing, and selling telecommunications equipment. StratoComm's stock is a penny stock that is publicly traded and quoted on the electronic quotation system formerly

¹Unless indicated otherwise, the facts set forth above are admitted by the opposing party, properly supported by the record, or deemed admitted (Danzig, who is proceeding *pro se*, failed to respond to the motion so the properly support facts pertinent to him are deemed admitted, see Local Rule 7.1(a)(3)).

known as the Pink Sheets. From late 2007 until April 2010, StratoComm received approximately \$4 million from selling its stock to more than 100 investors. StratoComm has never filed a registration statement with the U.S. Securities and Exchange Commission, ("Commission"), never prepared audited financial statements or provided an offering memorandum to investors.

b. Roger D. Shearer

Roger D. Shearer, who founded StratoComm in 1997, is the sole Officer and Director of StratoComm and has held those positions since the inception of the company. Shearer is also the Chief Executive Officer ("CEO") of StratoComm and has held that position since the inception of the company except for a one-month period in the fall of 2010. As CEO, Shearer controlled the conduct of StratoComm during all periods in which he was CEO. As sole Director of StratoComm, Shearer authorized himself, as CEO of StratoComm, to issue StratoComm stock between January 2007 and January 2011. From November 2007 until April 2010, Shearer was StratoComm's largest beneficial stockholder.

c. Craig Danzig

Craig Danzig was employed by StratoComm from at least 2007 until November 2010, initially as Director of Investor and Institutional Relations and subsequently as Executive Director of Institutional Relations. Prior to joining StratoComm, Danzig was a registered representative (commonly known as a "stockbroker") associated with several broker-dealers. Danzig held a license to sell securities from 1991 until 2000, when it lapsed. From November 2007 through April 2010, Danzig was not licensed to sell

securities.

d. StratoComm Portrayal as a Successful Telecommunications Company

The SEC asserts that during the period November 2007 through April 2010, StratoComm stated that it was designing, manufacturing and selling telecommunications equipment called the Transitional Telecommunications System (“TTS”) to countries in the developing world. Plt. Statement of Facts (“PSOF”) ¶ 19. Defendants StratoComm and Shearer asserts that StratoComm did not state that it manufactured anything “other than its proprietary payload” and that, to the extent their Answer can be read as admitting that it manufactured telecommunications systems generally, it “was an unintentional oversight.” Shearer SOF ¶ 19; see also StratoComm SOF ¶ 19.

According to the SEC, StratoComm described its TTS as consisting primarily of an antenna system suspended from a blimp (“aerostat”) tethered to the ground. PSOF ¶ 20. Defendants StratoComm and Shearer deny this statement and contend that “the transitional telecommunications system consists primarily of three components, including the users segment, the flight segment and the ground segment, each of which are composed of separate and distinct components. . . . The flight segment consists of the aerostat, tether, and mooring system.” Shearer SOF ¶ 20.

It is undisputed that StratoComm stated that its TTS could provide 500,000 subscribers with broadband internet, wireless voice, or broadcast services. StratoComm also stated that it was developing a Stratospheric Telecommunications System (“STS”), including solar-powered equipment to be stationed in the stratosphere 65,000 feet above ground. StratoComm explained that the STS would be able to provide telecommunications services to three million customers in a 1,000 kilometer area, and that it was operating on

two parallel tracks: (i) current production and sales of the TTS, and (ii) development of the stratospheric system. It is also undisputed, however, that StratoComm has never actually built a TTS; has never tested an operational prototype of a TTS; has never had all of the parts to construct a TTS; has never possessed an aerostat; has never had the funds to acquire an aerostat; has never exchanged a TTS for money; and has never received a deposit on a TTS.

The Commission further maintains that as of late 2007, StratoComm had not yet resolved basic design issues relating to the TTS and had only estimated the cost of the system at a rough level. PSOF ¶ 33. Defendants contend that at the referenced time, “the design was complete and the TTS was marketable for sale and deliverable, but for the finding of a moneyed purchaser.” Shearer SOF ¶ 33; see also StratoComm SOF ¶ 33. It is undisputed, however, that StratoComm has never acquired any customers who transmitted payment to StratoComm for products or services; has never had any revenue; and its sole source of support, aside from loans from friends and family, has been the money that it received from selling its securities to investors.

e. StratoComm’s Alleged False And Misleading Statements

1. November 20, 2007 Press Release

During the November 2007 through May 2009 time period, Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, was authorized to write, publish and distribute press releases on behalf of StratoComm. On November 20, 2007, StratoComm issued a press release entitled “StratoComm Announces \$45 Million System Sale.” The press release identifies StratoComm as its source. Shearer, acting

within the scope of his authority, and in his capacity as CEO of StratoComm, wrote the November 20, 2007 press release and authorized its release and publication. The press release was posted on StratoComm's website and was distributed to the public via PR Newswire on November 20, 2007. This press release states that Evergreen ISP Platform, PLC "has contracted with StratoComm for the purchase of \$45,000,000 of StratoComm Transitional System telecommunications equipment and services." The press release described StratoComm as a "provider" of "telecommunications infrastructure technologies" and stated that a "\$45 million contract" was "awarded" to StratoComm by an entity in Cameroon for three TTS units and related services. However, as of November 20, 2007, StratoComm had never built or tested an operational TTS and StratoComm did not have the money to do so.

The SEC asserts that "on November 20, 2007, Shearer knew that StratoComm did not have an operational TTS prototype and had no TTS units to supply." PSOF ¶ 47. Defendants "object[] to the characterization that StartoComm 'had no TTS units to supply'" because "[i]t was a logistical impracticality and financial impossibility to maintain a TTS unit 'in stock' before a purchaser was acquired and paid a significant downpayment. Moreover, StratoComm was able to supply a TTS at any time, given its possession of the proprietary payload and the ready availability of the additional required off-the-shelf components to be supplied through third-party vendors." Shearer SOF ¶ 47; StratoComm SOF ¶ 47.

However, it is undisputed that on November, 20, 2007, StratoComm had not provided telecommunications infrastructure technologies to any person or entity, and Shearer knew StratoComm did not have the funding in place to build a TTS. Thus,

defendants concede that when Shearer drafted the November 20, 2007 press release, he knew that StratoComm had not provided telecommunications infrastructure technologies to any person or entity. Moreover, StratoComm never received a monetary deposit or payment from Evergreen ISP Platform based upon the sale announced in the November 20, 2007 press release and StratoComm never received any revenue based upon the sale referenced in the November 20, 2007 press release.

2. January 29, 2008 Press Release

On January 29, 2008, StratoComm issued a press release announcing the sale, valued at \$15 million, of a TTS and related services to StratoComm's joint venture partner in Madagascar. The press release identifies StratoComm as its source. Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, wrote the January 29, 2008 press release, and acting within the scope of his authority and in his capacity as CEO of StratoComm, authorized the release and publication of the January 29, 2008 press release. StratoComm's January 29, 2008 press release was distributed to the public via PR Newswire on the same date, and posted on StratoComm's website on February 26, 2008. The January 29, 2008 press release referred to the Madagascar transaction as "StratoComm's most recent system sale," and described StratoComm as a "provider" of telecommunications infrastructure technologies. However, as of January 29, 2008, StratoComm had never built or tested an operational TTS and StratoComm did not have the money to do so. The Commission contends that, as of January 29, 2008, Shearer knew that StratoComm did not have an operational TTS prototype or TTS unit to supply to Madagascar. PSOF ¶ 61. Shearer "objects" to this assertion, contending again that "[i]t was a logistical impracticality and financial impossibility to maintain a TTS unit 'in

stock' before a purchaser was acquired and paid a significant downpayment," and that "StratoComm was able to supply a TTS at any time, given its possession of the proprietary payload and the ready availability of the additional required off-the-shelf components to be supplied through third-party vendors." Shearer SOF § 61; see also StratoComm SOF § 61 (same).

However, there is no dispute that as of January 29, 2008, StratoComm had not provided telecommunications infrastructure technologies to any person or entity, and Shearer knew that StratoComm did not have the funding in place to build a TTS. It is also undisputed that StratoComm never received a monetary deposit or payment from StratoComm Madagascar SA based upon the sale announced in the January 29, 2008 press release, and StratoComm never received any revenue based upon the agreement referenced in the January 29, 2008 press release.

3. September 2, 2008 "Executive Informational Overview"

On September 2, 2008, StratoComm published its Executive Informational Overview. It was prepared at the direction of Shearer acting within the scope of his authority and in his capacity as CEO of StratoComm. The Executive Informational Overview was prepared by StratoComm with the assistance of Crystal Research Associates, LLC. StratoComm paid Crystal Research Associates \$40,000 and provided 300,000 StratoComm stock warrants to assist in the preparation of the Executive Informational Overview. The Executive Informational Overview was based upon information provided by StratoComm. Shearer reviewed, approved and authorized the release of the Executive Informational Overview. StratoComm's logo and contact information appeared at the top of the first page of the Executive Informational Overview

and StratoComm's logo appears on every page of the document.

StratoComm's Executive Informational Overview stated that "StratoComm's aerostat is nearly 37 meters in length and 12 meters at its widest portion. It meets all U.S. Federal Aviation Administration (FAA) requirements, including the presence of an emergency flight termination system and proper lighting, and can carry a payload of up to 225 kilograms." The Executive Informational Overview made the following assertions regarding the dimensions and performance of the TTS:

The TTS is a tethered aerostat 37 meters in length positioned 1,500 meters above the region for which it provides telecommunications. Due to its proprietary payload designed in-house by StratoComm's Development Team, the TTS can support broadband Internet, wireless voice, or broadcast services (up to 100 video channels) for roughly 500,000 customers in an 80-kilometer diameter area.

StratoComm's Executive Informational Overview at 37.

StratoComm's Executive Informational Overview described the TTS as "presently available," and stated that much of the company's resources were devoted to support of its "installed TTSs." StratoComm's Executive Informational Overview at 6. StratoComm's Executive Informational Overview also stated that, "[a]t present, the Company has sold three TTS aerostats to Cameroon [and] one to Madagascar..." The Executive Informational Overview contained pictures and artist's renderings that, the SEC contends, were "presented in a manner suggesting that they represented existing StratoComm systems, such as tethered airships." PSOF ¶ 78; but see Shearer SOF § 78;²

²("Defendant Shearer denies the assertions contained in [PSOF] paragraph 78. The assertion that the pictures and artist's renderings in the Executive Informational Overview were presented in a manner suggesting they represented existing systems is an opinion of the author of the assertion in paragraph 78 and cannot be said to be a fact. What is a fact is that the Executive Informational Overview refers to pictures and drawings produced in the Overview as depicted renderings, not actual photographs of existing items.")

StratoComm SOF ¶ 78.³

The Executive Informational Overview also stated that StratoComm was “presently selling” the TTS, that TTS units “have been sold...for \$60 million to date,” and that its goal was to obtain “up to an additional \$75 million in sales” by the end of 2008, which was less than four months after the Executive Informational Overview was issued. Executive Informational Overview at 13, 36. StratoComm admits this statement, but adds that “the Overview goes on to state that ‘the Company expects to begin receiving funds under these sales contracts during the fourth quarter 2008.’” StratoComm SOF ¶ 80. Shearer “admits in part” the SEC’s statement, but “notes that while the Overview states that TTS units have been sold for \$60 million, it also clearly states in the same sentence that ‘the Company expects to begin receiving funds under these sales contracts during the fourth quarter 2008,’ which clearly by implication means that the company had received no funds under the sales contracts.” Shearer SOF ¶ 80. Nevertheless, defendants concede that StratoComm’s Executive Informational Overview stated that “the TTS now supports wireless telephony,” and that, “StratoComm anticipates that the first TTS unit will likely be in service by the first quarter 2009.”

The Commission asserts that the “Executive Informational Overview described a product that does not exist and sales that never occurred.” PSOF ¶ 83. Shearer contends that: (1) “the Overview describes more than one product; namely, that TTS and the STS, a transitional telecommunications system and a stratospheric telecommunications system,

³(“Denies the assertions in [PSOF] Paragraph 78 as the self-serving characterizations of a party, and affirmatively states that the pictures and drawings in the Overview are referred to as depicted renderings and not actual photographs of existing items.”)

respectively;" (2) "the reality is that all of the components of the described products existed, but not as a single unit. . . . Instead, the Overview claimed only that the company manufactured – and hence maintained physically – the proprietary payload;" (3) "the Overview made clear that a 'turnkey aerostat' would be shipped to a buyer only when it had been developed;" (4) "it is undisputed that StratoComm entered into several contracts for sale. In fact, the Overview reflects that "StratoComm has entered into contracts that are expected to result in TTS sales of \$60 million dollars." (emphasis in SOF); and (5) "[c]ontracts for sale were executed between StratoComm and system purchasers on two occasions." Shearer SOF ¶ 83. StratoComm asserts that

each of the components of the described products existed, but not as a single unit. . . . The Overview claimed only that the company manufactured – and hence maintained physically – the proprietary payload. . . . It is undisputed that StratoComm entered into contracts for the sale of the TTS. StratoComm did not represent that it had already been paid on such contracts. The Overview reflects that "StratoComm has entered into contracts that are expected to result in TTS sales of \$60 million dollars." The Overview also detailed extensive risks with respect to potential barriers to the fruition of the contracts.

StratoComm SOF ¶ 83 (citations omitted).

However, is undisputed that when Shearer approved the Executive Informational Overview for public distribution, he knew that (1) StratoComm had never owned an aerostat; (2) StratoComm never had the funding to purchase an aerostat or build an operational TTS; (3) StratoComm has never delivered an operational TTS to any entity; (4) StratoComm had not installed a TTS; and (5) StratoComm had not received payment in connection with the sales agreements referenced in the November 20, 2007 and January 29, 2008 press releases. Danzig reviewed the Executive Informational Overview before it was finalized, and it was placed on StratoComm's website on December 3, 2008 and

posted on Crystal Research Associates' website on September 2, 2008.

4. May 5, 2009 Press Release

On May 5, 2009, StratoComm issued a press release entitled, "StratoComm Corporation Schedules Initial System Turn On." Shearer, acting within the scope of his authority and in his capacity as CEO of StratoComm, wrote the May 5, 2009 press release and, acting within the scope of his authority and in his capacity as CEO of StratoComm, authorized the release and publication of the May 5, 2009 press release. StratoComm's May 5, 2009 press release was distributed via PR Newswire on May 5, 2009. This press release identifies "StratoComm Corporation" as its "source" and noted that "a team of engineers" was departing for Cameroon, "the location for installation of StratoComm's first commercial wireless telecommunications system." The May 5, 2009 press release described testing of the system at the company's facilities in New Jersey and the scheduled departure of the "installation and training team." It also emphasized that testing would ensure "efficient installation and reliable operation with system turn on."

It is conceded that the reference in the May 5, 2009 press release to "StratoComm's first commercial wireless telecommunications system" was not to a TTS. Rather, the system to be installed in Cameroon involved placement of telecommunications equipment on a radio tower. The press release did not disclose that the system installed in Cameroon was not a TTS. Further, the press release did not disclose that the system installed in Cameroon was anchored to a tower. It is conceded that if StratoComm had progressed to a stage where it had constructed and installed a TTS, that would have been a very significant event for the company.

f. Danzig's Marketing and Sales of StratoComm Stock

In his role as Director of Investor and Institutional Relations and subsequently as Executive Director of Institutional Relations, Danzig's primary responsibility was to market StratoComm's stock to investors. Danzig served as the designated contact within StratoComm for investors, relayed the terms of stock sales, handled paperwork relating to stock sales, and facilitated the issuance of shares. He marketed StratoComm's stock throughout the country by telephone, through e-mail and in face-to-face meetings. Danzig used the Executive Informational Overview as a "selling tool" to market StratoComm's stock and to convince investors of StratoComm's "legitimacy;" routinely directed potential investors to the Executive Informational Overview on the Crystal Research website; arranged for a copy of the Executive Informational Overview to be sent to potential investors; instructed a stock broker to use the Executive Informational Overview in dealing with a client considering an investment in StratoComm; directed potential providers of public relations services to the Executive Informational Overview; and directed potential providers of investment banking services to the Executive Informational Overview.

It is undisputed that when Danzig distributed the Executive Informational Overview to potential investors, Danzig knew that StratoComm did not have a TTS. In an email on October 30, 2009, more than a year after the Executive Informational Overview was issued, Danzig complained to Shearer that StratoComm had "no money, and no product." StratoComm paid Danzig a salary plus a "discretionary bonus" that was based on his performance in raising money by selling the company's securities. While marketing and selling StratoComm stock to investors, Danzig was not registered as a broker and was not associated with a registered broker.

III. DISCUSSION

a. Antifraud Provisions of the Federal Securities Laws

The antifraud provisions of the federal securities laws include Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), Rule 10b-5 promulgated thereunder, and Section 17(a) of the Securities Act of 1933 (the "Securities Act"). 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5 and 15 U.S.C. § 77q(a). To establish a violation of Section 17(a)(1) of the Securities Act or Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Commission must demonstrate: (1) a misrepresentation or omission, (2) that was material, (3) that was made in the offer and sale of a security (Section 17(a)(1)) or in connection with the purchase or sale of securities (Section 10(b) and Rule 10b-5), (4) scienter, and (5) the involvement of interstate commerce, the mails, or a national securities exchange. *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996); see 15 U.S.C. § 78j(b).⁴ Scienter is not an element of a violation of Section 17(a)(2) or (3). *First Jersey Sec.*, 101 F.3d at 1467.

1. Misrepresentation or Omission

Statements that create a false impression that a company has a developed, tested and presently available product when, in fact, it has not, are false, misleading, and

⁴In pertinent part, Section 10(b) declares it unlawful for any person, directly or indirectly, by the use of any means of interstate commerce, the mails, or a national securities exchange,

[t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b).

constitute misrepresentations under the antifraud provisions of the federal securities laws. *SEC v. Platforms Wireless Int'l., Corp.*, 617 F.3d 1072 (9th Cir. 2010);⁵ see also *SEC v. North American Research & Dev. Corp.*, 424 F.2d 63, 77 (2d Cir. 1970) (“the deliberate use of ambiguities and half-truths” rendered statements “materially false and misleading”); *SEC v. Schiffer*, No 91 Civ. 5835, 1998 WL 307375 at *2 (S.D.N.Y June 11, 1998) (“half-truths are as violative of [sic] as outright falsehoods”).

A. November 2007 and January 2008 Press Releases

The November 20, 2007 press release described StratoComm as a “provider” of “telecommunications infrastructure technologies” and announced that StratoComm was “awarded” a “\$45 Million contract for the sale” of three TTS units in Cameroon. The press release represented that StratoComm’s Cameroonian joint venture had contracted with StratoComm for the purchase of \$45 million worth of “StratoComm Transitional System telecommunications equipment and services.” Although defendants assert that “the design was complete and the TTS was marketable for sale and deliverable, but for the finding of a moneyed purchaser,” that qualification does change the fact that the November 20, 2007 press release represented that StratoComm had contracted for the sale of the TTS technology. Moreover, it is undisputed that on

⁵In *Platforms Wireless*, the company issued a press release describing a telecommunications system remarkably similar to StratoComm’s purported systems. Platforms’ “ARC” telecommunications system consisted of a portable antenna payload and either airplanes or aerostats to carry the antenna aloft. *Platforms Wireless*, 617 F.3d at 1981. The press release described technical details and performance characteristics of the various components of the ARC system and spoke in the present tense when describing the components (i.e., “the Zero-Gravity Aerostructure is a large, manned, helium-filled aerodynamically-shaped airship structure.”) *Id.* at 1082. In contrast to the press release, Platforms Wireless did not have an operational prototype of the ARC system or the money to build a prototype. The court concluded that the press release was materially misleading because “[c]onsidered as a whole, it leaves the unmistakable impression that the ARC system exists.” *Id.* at 1095.

November, 20, 2007, StratoComm had not provided telecommunications infrastructure technologies to any person or entity, and Shearer knew StratoComm did not have the funding in place to build a TTS. Still further, it is undisputed that StratoComm never received a monetary deposit or payment based upon the sale announced in the November 20, 2007 press release, and StratoComm never received any revenue based upon the sale referenced in the November 20, 2007 press release.

On January 29, 2008, StratoComm issued another press release announcing the “sale” of a TTS unit in Madagascar for \$15 million. This release, entitled “StratoComm Corporation Signs \$15 Million System Sale Agreement,” again described StratoComm as a “provider” of “telecommunications infrastructure technologies.” The press release referred to the Madagascar “sale” as “StratoComm’s most recent system sale.” While Shearer contends that it was a logistical impracticality and financial impossibility to maintain a TTS unit “in stock” before a purchaser was acquired and paid a significant down payment for it, that does not change the misleading nature of the January 29, 2008 press release that indicated that a \$15 million sale had occurred in Madagascar. Further, his current assertion that StratoComm “at all times possessed its proprietary telecommunications payload” or “it manufactured the proprietary telecommunications payload” is contradicted by his own prior sworn testimony to the SEC in May 2008. In this regard, Shearer testified that “[t]he payload is completely designed, yeah. We have not manufactured the first one yet.” 5/22/2008 Shearer Investigative Test. at 90:5-6 (emphasis added). It is well settled that a party may not create a question of fact sufficient to defeat summary judgment by submitting an affidavit that contradicts prior sworn testimony. See *Raskin v. Wyatt Co.*, 125 F.3d 55, 63 (2d Cir. 1997).

Defendants' contention that the press releases are not false and misleading because they contained Shearer's contact information for potential investors to obtain any additional information is insufficient speculation upon which to defeat summary judgment. Further, "investors are not generally required to look beyond a given document to discover what is true and what is not." *Miller v. Thane Int'l, Inc.*, 519 F.3d 879, 887 (9th Cir. 2008) (citing *Dale v. Rosenfeld*, 229 F.2d 855, 858 (2d Cir. 1956) ("Availability elsewhere of truthful information cannot excuse untruths or misleading omissions in the prospectus. Readiness and willingness to disclose are not equivalent to disclosure.")).

There can be no legitimate dispute that these press releases are false and misleading because they give the impression that the TTS actually existed in operational, readily deployable form, when the TTS did not even exist. It is undisputed at the time that StratoComm issued these press releases, StratoComm had not built or tested an operational prototype of the TTS and did not have the money to do so. Indeed, around the time that StratoComm disseminated these press releases, it had not resolved even basic design issues related to the TTS.

By announcing two "sales" of StratoComm "Transitional System telecommunications equipment" and services worth a total of \$60 million, StratoComm's press releases leave the unmistakable—and false—impression that the TTS exists when it did not. In light of these purported sales announced by these press releases, it was "highly unreasonable" for StratoComm not to disclose that the TTS did not actually exist and that StratoComm had never actually built or tested such a system. See *Platforms Wireless*, 617 F.3d at 1095.

The press releases are also false and misleading because they refer to

StratoComm as a “provider” of “telecommunications infrastructure technologies.” There is no dispute that as of November 2007 and January 2008, StratoComm had not “provided” telecommunications infrastructure technologies to any person or entity.

B. September 2, 2008 “Executive Informational Overview”

StratoComm made additional false and materially misleading statements regarding the existence of the TTS through the preparation and dissemination of the Executive Overview, which included present-tense descriptions of the physical traits, dimensions, performance and service capabilities of the TTS.⁶ These present-tense statements are false and misleading because they leave “the unmistakable impression that [StratoComm possessed an operational aerostat and the TTS] system exists.” *Platforms Wireless*, 617 F.3d at 1095. It is undisputed that StratoComm did not possess an aerostat and never had the funding to purchase one. Yet, the Executive Overview represented the TTS as “presently available” and stated that much of the company’s resources were devoted to supporting its “installed TTSs.” This was false and misleading because there were no “installed TTSs” at the time the Executive Overview was written and disseminated.

⁶For example, the Executive Overview stated:

StratoComm’s aerostat is nearly 37 meters in length and 12 meters at its widest portion. It meets all U.S. Federal Aviation Administration (FAA) requirements, including the presence of an emergency flight termination system and proper lighting, and can carry a payload of up to 225 kilograms.

The Executive Overview also made the following assertions regarding the dimensions and performance of the TTS:

The TTS is a tethered aerostat 37 meters in length positioned 1,500 meters above the region for which it provides telecommunications. Due to its proprietary payload designed in-house by StratoComm’s Development Team, the TTS can support broadband Internet, wireless voice, or broadcast services (up to 100 video channels) for roughly 500,000 customers in an 80-kilometer diameter area.

The Executive Overview also included visual images suggesting that StratoComm products, including tethered airships, actually existed. These statements and impressions, however, are false and misleading because StratoComm had never possessed an aerostat or built an operational TTS.

The Executive Overview also repeatedly referred to “sales” of TTS units and stated that TTS units “have been sold...for \$60 million to date.” Further, the Executive Overview stated that StratoComm’s goal was to obtain “up to an additional \$75 million in sales” by the end of 2008, which was less than four months after the Executive Overview was issued. Yet, when the Executive Overview was issued, StratoComm had no TTSs to sell and no resources to build one. No reasonable fact finder could conclude that, as Shearer contends, the Overview describes TTS and STS systems; “the Overview claimed only that the company manufactured – and hence maintained physically – the proprietary payload;” the Overview merely indicated that “a ‘turnkey aerostat’ would be shipped to a buyer only when it had been developed;” the Overview reflects that “StratoComm has entered into contracts that are expected to result in TTS sales of \$60 million dollars;” and, the Overview divulged that “[c]ontracts for sale were executed between StratoComm and system purchasers on two occasions.”

Taken together, the representations made in StratoComm’s Executive Overview paint a clear picture that the TTS existed and multiple units had been sold for millions. This was not true. The use of cautionary language in the Overview does not shield defendants from liability. See *SEC v. Meltzer*, 440 F. Supp. 2d 179, 191 (E.D.N.Y. 2006)(generalized disclosures of amorphous risks do not shield defendants’ from liability). Moreover, any insulation from liability through the use of cautionary language does not

apply to “historical or present fact-knowledge” -- statements that a defendant knew was false when made, as was the case here. *Id.* at 191-92. In addition, a showing of investor reliance is not required to establish fraud. *SEC v. Credit Bancorp, Ltd.*, 195 F. Supp. 2d 475, 490-91 (S.D.N.Y. 2002). Thus, the fact that a select few investors have attested that they were not misled by the Overview is of no moment. See *United States v. Elliot*, 62 F.3d 1304, 1308 (11th Cir. 1995). Accordingly, were the case to proceed to trial, there could be no conclusions other than that StratoComm’s Executive Overview, like the press release in *Platforms Wireless*, is “deceptive, an absolute and unequivocal falsehood.” *Platforms Wireless*, 617 F.3d at 1095.

C. May 5, 2009 Press Release

On May 5, 2009, StratoComm issued a press release announcing that it would “turn on” of its first system. In the months leading up to this press release, StratoComm had stated publicly that it anticipated that “the first TTS unit will likely be in service by the first quarter 2009.” The May 5, 2009 press release stated that StratoComm was preparing to send engineers to Cameroon “for installation of StratoComm’s first commercial wireless telecommunications system.” The press release described testing of the system at the company’s facilities in New Jersey and the scheduled departure of the “installation and training team.” It emphasized that testing would ensure “efficient installation and reliable operation with system turn on.”

In light of the surrounding circumstances, and in particular, StratoComm’s public statement that it anticipated that the first TTS would be in service at the beginning of 2009, this press release implied that StratoComm was installing its TTS in Cameroon. It was not.

The system to be installed in Cameroon was not the TTS, but a much more rudimentary system involving the placement of an antenna on a radio tower. There is no merit to defendants' contention with respect to the May 5, 2009 press release that a "reasonable investor familiar with StratoComm's prior disclosures would read" it in a certain way and would figure out the truth. StratoComm Memo at 10. As indicated above, investors are not generally required to look beyond a given document to discover what is true and what is not.

Based on the undisputed evidence, a reasonable fact finder could only conclude that StratoComm's failure to disclose the material facts regarding the nature of the system installed in Cameroon was misleading.

2. Materiality

Information is material if there is a "substantial likelihood that a reasonable person would consider it important in deciding whether to buy or sell shares." *Azrielli v. Cohen Law Offices*, 21 F.3d 512, 518 (2d Cir. 1994); *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 423 (S.D.N.Y. 2007). An omitted fact is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 2132 (1976). Statements related to whether a company has a product to sell are material as a matter of law. *SEC v. Enter. Solutions, Inc.*, 142 F. Supp. 2d 561, 577 (S.D.N.Y. 2001) ("[w]hether the company actually had products to sell is clearly relevant information to a potential investor."). This is particularly true for development-stage companies. "A

finished, tested product is almost certainly the single most important piece of information for an investor deciding whether to invest in a start-up company.” *Platforms Wireless*, 617 F.3d at 1095.

The false and misleading statements in StratoComm’s press releases and the Executive Overview were material. StratoComm’s statements falsely portrayed it as a development-stage company that had progressed to the operational stage with a finished product and sales, when it had not. These misstatements are material because they relate to whether the company has a product to sell and a viable business model. *See Enter. Solutions*, 142 F. Supp. 2d at 577.

A. Maker of the Statement

StratoComm made the false and misleading statements in the press releases and the Executive Overview. *See Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011)(with respect to material misstatements under Exchange Act Rule 10b-5(b), “the maker of a statement is the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it.”); *SEC v. Stoker*, 865 F. Supp. 2d 457, 463 (S.D.N.Y. 2012).⁷ Each of the press releases identify StratoComm as its “source.” Acting within the scope of his authority as StratoComm’s

⁷(“To begin with, [Section 17(a)], on its face, does not state that a defendant must obtain the funds personally or directly. On the contrary, all three prongs of liability under Section 17(a) are preceded by the common modifier “directly or indirectly.” It would be contrary to this language, and to the very purpose of Section 17(a), to allow a corporate employee who facilitated a fraud that netted his company millions of dollars to escape liability for the fraud by reading into the statute a narrowing requirement not found in the statutory language itself. As the Supreme Court has repeatedly stated, “Congress intended securities legislation enacted for the purpose of avoiding frauds to be construed ‘not technically and restrictively, but flexibly to effectuate its remedial purpose.’” *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151, 92 S. Ct. 1456, 31 L.Ed.2d 741 (1972) (quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 195, 84 S.Ct. 275, 11 L. Ed.2d 237 (1963)).”)

CEO, Shearer drafted, authorized and disseminated each release. Thus, StratoComm is the entity with ultimate control over the statements in the press releases, including their “content and whether and how to communicate it.” *Janus Capital Group*, 131 S. Ct. at 2302.

StratoComm also made the false and misleading statements in the Executive Overview. The Executive Overview itself states that StratoComm prepared it with the assistance of Crystal Research Associates. StratoComm’s logo appears on every page and the company’s contact information appears at the top of the first page.

StratoComm had ultimate control over the Executive Overview’s content and whether and how to communicate it. StratoComm paid for the Executive Overview, and Shearer, as StratoComm’s CEO, approved the final version. Thus, StratoComm made the false and misleading statements in the press releases and the Executive Overview.

3. Statements Made in Connection with the Offer, Purchase or Sale of Securities

Courts construe broadly the “in connection with” element of Section 10(b), Rule 10b-5, and Section 17(a). *SEC v. Credit Bancorp, Ltd.*, 195 F. Supp. 2d 475, 491 (S.D.N.Y. 2002); *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y.1992). To establish that fraudulent conduct satisfies the “in connection with” requirement, “[i]t is enough that the scheme to defraud and the sale of securities coincide.” *SEC v. Zandford*, 535 U.S. 813, 822, 122 S. Ct. 1899, 1904 (2002). The “in connection with” requirement is satisfied whenever “assertions are made . . . in a manner reasonably calculated to influence the investing public, e.g., by means of the financial media” *SEC v. Texas Gulf Sulfur Co.*, 401 F.2d 833, 862 (2d Cir. 1968). Applying this standard, courts

have concluded that publicly-disseminated press releases, research reports, and website representations that contain materially false and misleading statements regarding an issuer of securities satisfies the “in connection with” requirement. *See, e.g., SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993); *see also Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294 (3d Cir. 2005) (statements made in a research report satisfied the “in connection with” requirement under Section 10(b)); *SEC v. DCI Telecomm., Inc.*, 122 F. Supp. 2d 495, 499-500 (S.D.N.Y. 2000) (statements in press releases and website content satisfy the “in connection with” requirement).

The November 20, 2007 and January 29, 2008 press releases and the Executive Overview were posted on StratoComm’s website. The Executive Overview also was posted on the Crystal Research Associates website. During the same time that StratoComm disseminated the press releases and Executive Overview, it sold approximately 62 million shares of stock. In addition, during this time StratoComm’s shares were quoted on the over-the-counter market and were purchased and sold by investors. Thus, a reasonable fact finder could only conclude that StratoComm made the false and misleading statements in a manner reasonably calculated to influence investors, and the statements coincided with the offer and sale of the company’s stock. Accordingly, the statements were made “in connection with” the offer, purchase or sale of securities.

4. False and Misleading Statements Made With Scienter

Scienter under Section 10(b) “refers to a mental state embracing intent to deceive, manipulate, or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12, 96 S. Ct. 1375, 1381 (1976). Scienter may be established by knowing misconduct or reckless

disregard for the truth. *SEC v. McNulty*, 137 F.3d 732, 741 (2d Cir. 1998). Recklessness is “an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it.” *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F.2d 38, 47 (2d Cir. 1978). Furthermore, “[r]epresenting information as true while knowing it is not, recklessly misstating information, or asserting an opinion on grounds so flimsy as to belie any genuine belief in its truth, are all circumstances sufficient to support a conclusion of scienter.” *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 424 (S.D.N.Y. 2007). The scienter of a company’s officer may be attributed to the company where he was acting within the scope of his apparent authority. *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003); *Universal Express, Inc.*, 475 F. Supp. 2d 412, 424 n.4 (S.D.N.Y. 2007).

The incontrovertible record shows that StratoComm and Shearer made materially false and misleading statements with scienter. For example, as a development stage company, StratoComm (through its Chief Executive Officer Shearer, who prepared and/or wrote the statements at issue), stated in its November 7, 2007 and January 29, 2008 press releases that it was a “provider” of “telecommunication infrastructure technologies.” In its Executive Overview, StratoComm also stated that its TTS units [part of its alleged telecommunication infrastructure technologies] are “presently available”; expansively described, in the present tense, the dimension and performance of TTS; and stated that much of the company’s resources were devoted to supporting its “installed TTSs.” These statements made by StratoComm (through Shearer) are indisputably false and misleading

in that StratoComm and Shearer have conceded through their admissions to the Commission's Statement of Material Facts that StratoComm had not provided telecommunication infrastructure technologies to anyone and TTS was neither "presently available" nor "installed" anywhere at the time these press releases and the Executive Overview were issued. See PSOF ¶¶ 25-30, 49, 63, 84-87; StratoComm's Response to PSOF at 3-7 (admitting PSOF ¶¶ 25-30, 45, 49, 59, 63, 75-77, 84-87); Shearer Response to PSOF at 4-7, 9 (same). These undisputed statements, together with the November 20, 2007 and January 29, 2008 press releases announcing two "sales" worth \$60 million (which were, at best, signing of some contracts where no money ever exchanged hands), leave an indelibly false and misleading impression that the company had a developed, tested, and presently available product when, in fact, it did not. See *SEC v. Gabelli*, 653 F.3d 49, 57 (2d Cir. 2011) (explaining that "'half-truths' – literally true statements that create a materially misleading impression – will support claims for securities fraud") (emphasis supplied), *rev'd on other grounds sub nom., Gabelli v. SEC*, 133 S. Ct. 1216 (2013).

Furthermore, in its Executive Overview, StratoComm stated that its TTS units [part of its alleged telecommunication infrastructure technologies] are "presently available"; expansively described, in the present tense, the dimension and performance of TTS; and stated that much of the company's resources were devoted to supporting its "installed TTSs." These statements made by StratoComm (through Shearer) are indisputably false and misleading.

A reasonable fact finder could only conclude that in preparing and disseminating the press releases and Executive Overview which contained the referenced false and

misleading statements regarding the existence of the TTS, Shearer engaged in knowing misconduct. As the founder, CEO and sole director of StratoComm, Shearer was aware that StratoComm had no operational TTS units. Specifically, at all times relevant to this action, Shearer knew that StratoComm: (1) had never built a TTS; (2) had never had the parts to build a TTS; (3) had never had the money needed to acquire the parts to build a TTS; (4) never tested an operational prototype; and (5) had never exchanged a TTS for money. In addition, at the time that he drafted the November 2007 and January 2008 press releases, Shearer knew that StratoComm had not provided “telecommunications infrastructure technologies” to any person or entity. Thus, a reasonable fact finder could only conclude that Shearer engaged in knowing misconduct when he drafted and disseminated the press releases and Executive Overview, portraying StratoComm as a company that had a finished, tested product and multi-million-dollar TTS sales.

Likewise, a reasonable fact finder could only conclude that Shearer engaged in knowing misconduct in that the November 2007 and January 2008 press releases falsely described StratoComm as a “provider” of “telecommunications infrastructure technologies.” As StratoComm’s CEO and sole director who acted within the scope of his authority, Shearer’s scienter is imputed to StratoComm. *Adams*, 340 F.3d at 1106-07.

5. Involvement of Interstate Commerce, the Mails, or a National Securities Exchange

Finally, there can be no dispute that the press releases and Executive Overview were used in connection with the interstate sale of securities by telephone, over the

internet,⁸ and publicly traded and quoted on the electronic quotation system formerly known as the Pink Sheets.

Thus, the Commission has established all five elements of its claims brought under of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

C. Liability Under Section 10(b) and Rule 10b-5 as a Controlling Person

Exchange Act Section 20(a) provides that:

[e]very person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

15 U.S.C. § 78t.

The SEC makes a *prima facie* case of liability under Section 20(a) by proving: “(1) a primary violation by a controlled person; (2) control of the primary violator by the defendant; and (3) that the controlling person was in some meaningful sense a culpable participant in the primary violation.” *Boguslavsky v. Kaplan*, 159 F.3d 715, 720 (2d Cir. 1998) (interior quotation marks and citation omitted). Control may be established by showing that the defendant possessed the “power to direct or cause the direction of the management and policies” of the controlled entity, “whether through the ownership of voting securities, by contract, or otherwise.” 17 C.F.R. § 240.12b-2 (defining control); see also *In re Take-Two Interactive Sec. Litig.*, 551 F. Supp. 2d 247, 306 (S.D.N.Y. 2008).

⁸While employed by StratoComm, Danzig used his e-mail addresses cdanzig@stratocomm.net and [REDACTED] to conduct StratoComm business.

Once the Commission establishes a *prima facie* case of Section 20(a) liability, the burden shifts to the defendant to prove that he acted in good faith or “did not directly or indirectly induce the act or acts constituting the violation” *First Jersey Secs., Inc.*, 101 F.3d at 1473 (quoting 15 U.S.C. § 78t).

The Commission has established a *prima facie* case against Shearer under Exchange Act Section 20(a) because it is undisputed that he controlled StratoComm. He founded the company and was the Chief Executive Officer and sole member of the Board of Directors. Shearer also was StratoComm’s largest beneficial shareholder. StratoComm’s primary violations of the securities laws are demonstrated above. Furthermore, Shearer was a culpable participant in the company’s issuance of the misleading press releases because he wrote them and he knew that StratoComm had never constructed a TTS and did not have the means to do so. Shearer was a culpable participant in the company’s misstatements in the Executive Overview because he arranged for it to be produced, reviewed it, and approved it. Shearer has not rebutted the Commission’s *prima facie* case and, and thus is liable under Section 20(a) as a “controlling person” of StratoComm.

D. Aiding and Abetting Violations of Exchange Act Section 10(b) and Rule 10b-5

Exchange Act Section 20(e) permits the SEC to bring a civil enforcement action for aiding and abetting securities fraud against “any person that knowingly provides substantial assistance” to a primary violator of the securities laws. 15 U.S.C. § 78t(e); *SEC v. Apuzzo*, 689 F.3d 204, 211 (2d Cir. 2012). Aiding and abetting liability under the federal securities laws has three elements: (1) the existence of a securities law violation by

the primary violator; (2) knowledge of the violation on the part of the aider and abettor; and (3) “substantial assistance” by the aider and abettor in achieving the primary violation. *Apuzzo*, 689 F.3d 204 at 211.

In light of the uncontested facts in this matter, a reasonable fact finder could only conclude that Shearer aided and abetted StratoComm’s violations of Section 10(b). He knew that the press releases and the Executive Overview were materially misleading. Specifically, he knew that StratoComm: (1) had never built a TTS; (2) had never had the parts to build a TTS; (3) had never had the money needed to acquire the parts to build a TTS; (4) had never tested an operational prototype; and (5) had never exchanged a TTS for money. In addition, when he drafted the November 2007 and January 2008 press releases, Shearer knew that StratoComm had not provided “telecommunications infrastructure technologies” to any person or entity. Shearer substantially assisted StratoComm’s violations because he wrote the press releases and authorized their public distribution. In addition, Shearer arranged for the production of the Executive Overview, reviewed it, approved it, and authorized its dissemination.

A reasonable fact finder could also only conclude that Danzig aided and abetted StratoComm’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the Executive Overview. He knew that the Executive Overview contained materially misleading statements. Specifically, Danzig knew that, contrary to the representations in the Executive Overview, StratoComm did not have a TTS. Danzig substantially assisted the company’s conduct because he referred potential investors to the Executive Overview posted on the internet and “used it as a selling tool.” In this regard, Danzig referred investors to the Executive Overview on numerous occasions and

instructed a stock broker to use the Executive Overview in dealing with potential investors. Danzig also directed potential providers of public relations and investment banking services to the Executive Overview. Accordingly, Shearer and Danzig aided and abetted StratoComm's violations of Section 10(b) and Rule 10b-5.

E. Exchange Act Section 15(a) and Securities Act Section 17(a)

1. Acting as an Unregistered Broker

Section 15(a) of the Exchange Act makes it unlawful for a broker to effect any transaction in, or to induce or attempt to induce the purchase or sale of any security, unless such broker: (1) is registered with the Commission; (2) in the case of a natural person, is an associated person of a registered broker; or (3) satisfies the conditions for an exemption or safe harbor. Section 3(a)(4) the Exchange Act defines "broker" as any person "engaged in the business of effecting transactions in securities for the account of others." The SEC is not required to prove scienter to establish a violation of Section 15(a). *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

To demonstrate that someone is acting as a broker, the SEC is required to show a regularity of participation in securities transactions "at key points in the chain of distribution." *Mass. Fin. Servs, Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976) *aff'd*, 545 F.2d 754 (1st Cir. 1976). Among the activities that indicate that a person may be acting as a "broker" are: (1) solicitation of investors to purchase securities; (2) involvement in negotiations between the issuer and the investor; and (3) receipt of transaction based compensation. *SEC v. Gagnon*, No. 10-cv-11891, 2012 WL 994892, at *11 (E.D. Mich. March 22, 2012); *SEC v. Hansen*, No. 83 Civ. 3692, 1984 WL 2413, at *10

(S.D.N.Y. Apr. 6, 1984).

Danzig acted as an unregistered broker in violation of Section 15(a) of the Exchange Act by regularly engaging in the business of effecting transactions in securities for the accounts of others in exchange for transaction-based compensation. As Director of Investor and Institutional Relations and Executive Director of Institutional Relations, Danzig's primary responsibility was to solicit investors to purchase StratoComm's securities. He contacted investors about buying StratoComm securities, relayed terms of the transactions and handled related paperwork. Danzig also received transaction-based compensation in the form of a discretionary bonus that depended on how much money he raised for StratoComm by selling its securities to investors. Accordingly, the undisputed facts in this case establish that Danzig acted as an unregistered broker.

2. Section 17(a) of the Securities Act

Pursuant to Section 17(a) of the Securities Act, it is unlawful in the offer or sale of any securities to use any means of interstate commerce or the mails to: (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a). Scierter is not an element of a violation of Section 17(a)(2) or (3). *Aaron v. SEC*, 446 U.S. 680, 701–02, 100 S. Ct. 1945, 1958 (1980).

Based on the undisputed evidence, Danzig violated Section 17(a)(1) of the

Securities Act by employing a fraudulent device (the Executive Overview) as “a selling tool” to market StratoComm’s stock to investors and to convince investors of the “legitimacy” of the company. He either gave them a copy of the Executive Overview or referred them to Crystal Research Associates’ website, where it was posted. Danzig made such referrals on numerous occasions. It is undisputed that Danzig knew the statements contained in the Executive Overview were false because he knew that the company did not have a TTS. PSOF ¶¶ 113, 114. He violated Section 17(a)(2) by obtaining money or property by means of the untrue statements in the Executive Overview. His discretionary bonus was tied to the stock he sold, and he used the Executive Overview, which he knew contained untrue statements, as a “tool” to achieve those sales. Furthermore, he used the Executive Overview to solicit sales that generated funds for his employer, StratoComm. See *Stoker*, 865 F. Supp. 2d at 463 (concluding that Section 17(a)(2) is violated where the defendant obtained money or property for his employer while acting as its agent, or, alternatively, where the defendant personally obtained money indirectly from the fraud). Danzig violated Section 17(a)(3) by engaging in securities transactions and courses of business that operated as a fraud on StratoComm investors.

F. Offering and Selling Securities in Unregistered Transactions

Sections 5(a) and 5(c) of the Securities Act make it unlawful for any person to offer or sell any security through interstate commerce when no registration statement has been filed. 15 U.S.C. § 77e(a) and (c); *SEC v. Kern*, 425 F.3d 143 (2d Cir. 2005). The purpose of the registration requirement “is to protect investors by promoting full disclosure of

information thought necessary to informed investment decisions.” *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953).

Section 5 “imposes strict liability on offerors and sellers of unregistered securities” regardless of any degree of fault, negligence or intent on the seller’s part. *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) (citation omitted); accord *Aaron v. SEC*, 446 U.S. 680, 714 n. 5, 100 S. Ct. 1945, 64 L. Ed.2d 611 (1980)(a plaintiff need not also show scienter to prove a Section 5 violation). A defendant violates Section 5 if it is shown that he was a necessary participant or a substantial factor in the offering or selling of the unregistered securities. *SEC v. Cavanagh*, 445 F.3d 105 (2d Cir. 2006); *Calvo*, 378 F.3d at 1215; see also *SEC v. Chinese Consol. Benev. Ass’n, Inc.*, 120 F.2d 738, 741 (2d Cir.1941)(Liability for violations of Section 5 extends to those who have “engaged in steps necessary to the distribution of [unregistered] security issues.”).

To prove a violation of Section 5, the Commission must establishing three *prima facie* elements demonstrating that: (1) the defendant directly or indirectly sold or offered to sell securities; (2) through the use of interstate transportation or communication and the mails; and (3) when no registration statement was in effect. *Cavanagh*, 445 F.3d at 111 n. 13; *Cobalt Multifamily Investors I, LLC v. Arden*, 857 F. Supp. 2d 349, 357-58 (S.D.N.Y. 2011). A defendant may rebut this *prima facie* case by showing that the securities involved were not required to be registered. *Ralston Purina Co.*, 346 U.S. at 126.

It is undisputed that: (1) StratoComm offered and sold more than 62 million shares of stock to investors between late 2007 and April 2010; (2) StratoComm has never registered a securities offering with the Commission; (3) as StratoComm’s CEO and sole

director, Shearer authorized StratoComm's stock sales and directed the transfer agent to issue stock certificates; and (4) Danzig marketed StratoComm's stock throughout the country by telephone, through e-mail, and in face-to-face meetings. In addition, Danzig served as the designated contact within StratoComm for investors, relayed the terms of stock sales, handled paperwork relating to stock sales, and facilitated the issuance of shares. Thus, StratoComm offered and sold stock in unregistered transactions and Shearer and Danzig were necessary participants in those offerings. Accordingly, the Commission has established the *prima facie* elements of Section 5 liability with respect to StratoComm, Shearer and Danzig.

Defendants assert that they did not comply with the federal securities registration requirements because StratoComm was engaged in an exempted "private offering" only, and as a result, the SEC's unregistered claims (under Section 5 of the Securities Act) against them fail. See StratoComm Memo at 15-17; Shearer Memo at 21-24.

Registration exemptions are construed strictly to promote full disclosure of information for the protection of the investing public. *Cavanagh*, 445 F.3d at 115. The test for whether an offering is an exempt "private offering" under Section 4(2) is whether the offerees could "fend" for themselves, and whether the offerees had access to the same information that registration would provide. *Ralston Purina Co.*, 346 U.S. at 125-27. A number of factors are considered, including, the number of offerees, the relationship of the offerees to each other and the issuer, the manner of the offering (that is, solicitation), information disclosure or access, and the sophistication of the offerees. *SEC v. Life Partners, Inc.*, 912 F. Supp. 4, 10 (D.D.C. 1996). The party claiming the exemption must

show that it is met not only with respect to each purchaser, but also with respect to each offeree. *Life Partner*, 912 F. Supp. at 10.

Given the record in this case, defendants fail to establish entitlement to this exemption. First, there is no merit to defendants' argument that the exemption applies simply because StratoComm's securities were offered only to its existing shareholders. See *SEC v. Sunbeam Gold Mines Co.*, 95 F.2d 699, 702 (9th Cir. 1938) ("We therefore hold that an offering of securities under the Securities Act of 1933 may be a public offering though confined to stockholders of an offering company, a fortiori where the offerees include the stockholders of another company, though seeking to become stockholders of the offeror."). Second, defendants have failed to produce evidence of the required exact number and identity of all offerees. *Life Partners, Inc.*, 912 F. Supp. at 10 (citing *Western Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9th Cir. 1984)) ("To claim the private offering exemption, evidence of the exact number and identity of all offerees must be produced"). Third, defendants admitted to all of the Commission's Statement of Material Facts relating to StratoComm's unregistered stock sales, including the SMFs showing that StratoComm offered and sold stock to investors who were not accredited, that many of StratoComm's shareholders were inexperienced with investing, and that StratoComm never prepared audited financial statements or provided an offering memorandum to investors. See PSOF ¶¶ 5-6, 118-122; StratoComm's Response to PSOF at 2, 9 (admitting PSOF ¶¶ 5-6, 118-122); Shearer Response to PSOF at 2, 11 (same). Consequently, the Court finds there exists no material issue of fact whether defendants have rebutted the Commission's *prima facie* demonstration Sections 5(a) and 5(c) violations.

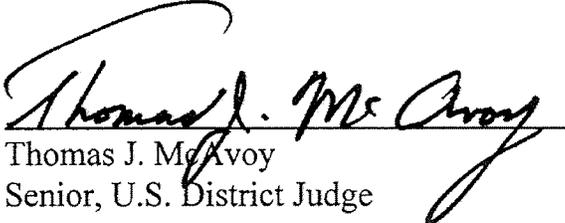
IV. CONCLUSION

For the reasons set forth above, the SEC's motion for partial summary judgment imposing liability on defendants on each claim in which the defendants are named [dkt. # 25] is **GRANTED**.

The parties may now present evidence to the Court, by way of separate motion and/or proceeding, regarding appropriate relief to be awarded.

IT IS SO ORDERED.

Dated: February 19, 2014


Thomas J. McAvoy
Senior, U.S. District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

1:11-CV-1188

**STRATOCOMM CORPORATION,
ROGER D. SHEARER, and
CRAIG DANZIG,**

Defendants.

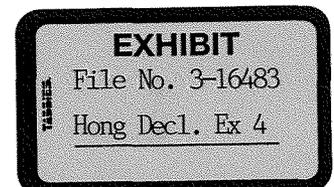
**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This is a civil enforcement action brought by the Securities and Exchange Commission (“the SEC” or “the Commission”) against StratoComm Corporation (“StratoComm”), Roger D. Shearer (“Shearer”), and Craig Danzig (“Danzig”). The Court previously granted the SEC’s motion for partial summary judgment as to liability against each Defendant on all claims. See 02/19/14 Dec. & Ord. (“Order”). The SEC now moves for judgment imposing various forms of relief as requested in the Complaint. Dkt. # 62. StratoComm and Shearer have opposed the relief, dkt. # 65, dkt. # 67,¹ and the SEC has

¹Danzig, who is proceeding *pro se*, failed to file any response. The SEC has provided proof of service of its motion on him. The Court will deem the motion unopposed as to Danzig, but will still examine (continued...)



replied. Dkt. # 70. The Court has considered all of the submission and decides the pending motion without the need for oral argument or a hearing.

II. BACKGROUND

The SEC alleged in its Complaint that StratoComm, a development stage company whose penny stock traded on the Pink Sheets; its founder and Chief Executive Officer, Shearer; and its Executive Director of Institutional Relations, Danzig, committed securities fraud and registration violations in the offer and sale of StratoComm stock. As to relief for each Defendant, the SEC requested permanent injunctions from future violations of the federal securities laws; disgorgement of ill-gotten gains with prejudgment interest; and civil penalties. In addition, the Commission sought permanent penny stock bars against Shearer and Danzig, and a permanent officer and director bar against Shearer.

After discovery, the SEC moved for partial summary judgment as to liability against each Defendant on all claims, including the fraud claims. The Commission argued that the undisputed facts showed that from November 2007 through April 2010, StratoComm, acting at Shearer's direction and with Danzig's assistance, knowingly issued and distributed several fraudulent public statements (three press releases and a marketing document called "Executive Informational Overview" or "Executive Overview") designed to portray StratoComm as a successful company that had developed, manufactured and sold sophisticated telecommunications equipment called the Transitional Telecommunications

¹(...continued)
whether the motion is facially meritorious.

System ("TTS")² to countries in the developing world for tens of millions of dollars, and that it was developing a Stratospheric Telecommunications System ("STS"), including solar-powered equipment to be stationed in the stratosphere 65,000 feet above ground.³ It is also undisputed, however, that StratoComm has never actually built a TTS; had never tested an operational prototype of a TTS; had never had all of the parts to construct a TTS; had never possessed an aerostat; had never had the funds to acquire an aerostat; has never exchanged a TTS for money; had never received a deposit on a TTS; had no paying customers; and had no revenues. Instead, its existence depended upon its ability to sell its securities to investors. The Commission further contended that the undisputed record showed that the Defendants sold approximately 62 million shares of StratoComm's stock to over 100 investors through illegal, unregistered stock offerings and that Danzig, who led the charge in selling StratoComm's stock, was not even registered as a broker.

The Court granted the SEC's motion, imposing liability on the Defendants on each claim in which the Defendants are named. See Order. The Court held that StratoComm, Shearer, and Danzig violated and/or aided and abetted in violating various antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act and/or Section 10(b) of the Exchange Act. See *id.* at 14-33. In addition, the Court found that all

²According to the SEC, StratoComm described its TTS as consisting primarily of an antenna system suspended from a blimp ("aerostat") tethered to the ground. PSOF ¶ 20. Defendants StratoComm and Shearer denied this statement and contended that "the transitional telecommunications system consists primarily of three components, including the users segment, the flight segment and the ground segment, each of which are composed of separate and distinct components. . . . The flight segment consists of the aerostat, tether, and mooring system." Shearer SOF ¶ 20. It is undisputed that StratoComm stated that its TTS could provide 500,000 subscribers with broadband internet, wireless voice, or broadcast services.

³StratoComm explained that the STS would be able to provide telecommunications services to three million customers in a 1,000 kilometer area, and that it was operating on two parallel tracks: (i) current production and sales of the TTS, and (ii) development of the stratospheric system.

Defendants violated Sections 5(a) and (c) of the Securities Act (for engaging in illegal, unregistered offerings); and Danzig violated Section 15(a) of the Exchange Act (for acting as an unregistered broker). See *id.* at 31-36. Finally, the Court found that Shearer was liable under Section 10(b) as a "controlling person" of StratoComm under Section 20(a) of the Exchange Act. *Id.* at 29. More specifically, the Court found that StratoComm's four public statements at issue (from November 2007 to May 2009) were materially false and misleading. The Court further found that each Defendant acted knowingly in violating and/or aiding and abetting violations of the anti-fraud provisions of the federal securities laws. Order at 25 ("The incontrovertible record shows that StratoComm and Shearer made materially false and misleading statements with scienter"); 26-27 ("A reasonable fact finder could only conclude that in preparing and disseminating the press releases and Executive Overview which contained the referenced false and misleading statements ... , Shearer engaged in knowing misconduct"); 30 (finding that Shearer and Danzig aided and abetted StratoComm's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder with scienter; "Shearer knew that the press releases and the Executive Overview were materially misleading"; "[Danzig] knew that the Executive Overview contained materially misleading statements"), 32-33 ("based upon the undisputed evidence, Danzig violated Section 17(a)(1) of the Securities Act by employing a fraudulent device (the Executive Overview) as a 'selling tool' to market StratoComm's stock to investors and to convince investors of the 'legitimacy' of the company"; "he used the Executive Overview, which he knew contained untrue statements, as a 'tool' to achieve those sales").

III. DISCUSSION

The SEC moves for a judgment imposing the relief it seeks in the Complaint. As indicated, StratoComm and Shearer oppose the motion. The Defendants' opposition, boiled to its core, is that all of the relief requested by the SEC is equitable in nature; thus, none is mandated by law but left to the sound discretion of the Court. Defendants argue that any exercise of discretion should weigh all of the relevant facts and circumstances and, when doing so, should yield lenient sanctions. Defendants make two principle arguments. First, they assert that any violation of the securities law was unintentional; was derived from Shearer's fervent belief that he could and would provide an operational telecommunications product making StratoComm successful and yielding a return for its investors; and their actions did not result in any investors being "duped." Second, the result of this litigation has caused StratoComm and Shearer grave financial distress, thereby making any large financial payment an impossibility. The Court will address the sought-after relief, and the parties' positions, *seriatim*.

a. Injunctions as to All Defendants

The SEC seeks permanent injunctions against all three defendants preventing them from violating the securities laws in the future. Injunctive relief is expressly authorized by Congress to proscribe future violations of the federal securities laws. *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998). An injunction should issue if the SEC can show that there is a substantial likelihood that the defendant will violate the securities laws in the future. *See id.* To determine such likelihood, courts consider the totality of the circumstances, including the fact that the defendant has been found liable for illegal conduct; the degree of scienter

involved; whether the infraction is an isolated occurrence; whether defendant continues to maintain that his past conduct was blameless; and whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated. See *id*; *SEC v. Bass*, 2011 WL 4344001, at *3 (N.D.N.Y. Sept. 14, 2011).

1. Whether defendant has been found liable for illegal conduct.

Defendants were found liable on each claim in which they are named, including fraud/aiding and abetting fraud claims under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and/or Section 17(a)(1) of the Securities Act. StratoComm and Shearer's attempts to re-litigate their previously rejected protestations of innocence are without merit. Shearer argues that StratoComm did possess a proprietary telecommunications payload in May 2008, and, therefore, the Court improperly rejected this contention in finding that StratoComm's public statements were false. See Order, p. 16;⁴ Shearer Decl. ¶¶ 18-19.⁵

⁴The Court wrote:

On January 29, 2008, StratoComm issued another press release announcing the "sale" of a TTS unit in Madagascar for \$15 million. This release, entitled "StratoComm Corporation Signs \$15 Million System Sale Agreement," again described StratoComm as a "provider" of "telecommunications infrastructure technologies." The press release referred to the Madagascar "sale" as "StratoComm's most recent system sale." While Shearer contends that it was a logistical impracticality and financial impossibility to maintain a TTS unit "in stock" before a purchaser was acquired and paid a significant down payment for it, that does not change the misleading nature of the January 29, 2008 press release that indicated that a \$15 million sale had occurred in Madagascar. Further, his current assertion that StratoComm "at all times possessed its proprietary telecommunications payload" or "it manufactured the proprietary telecommunications payload" is contradicted by his own prior sworn testimony to the SEC in May 2008. In this regard, Shearer testified that "[t]he payload is completely designed, yeah. We have not manufactured the first one yet." 5/22/2008 Shearer Investigative Test. at 90:5-6 (emphasis added). It is well settled that a party may not create a question of fact sufficient to defeat summary judgment by submitting an affidavit that contradicts prior sworn testimony. See *Raskin v. Wyatt Co.*, 125 F.3d 55, 63 (2d Cir. 1997).

Order, p. 16.

⁵ Shearer asserts that when he testified "The payload is complete designed, yeah. We have not manufactured the first one yet," the statement was in reference to "a particular proposed system sale-and
(continued...)

However, and assuming, *arguendo*, that StratoComm possessed a proprietary telecommunications payload in May 2008, that does not negate the falsity of the many statements contained in StratoComm's November 20, 2007 Press Release;⁶ its January 29, 2008 Press Release;⁷ its September 2, 2008 "Executive Informational Overview;"⁸ and its

⁵(...continued)

while the particular payload for that particular sale had not yet been produced, StratoComm did then physically possess its proprietary payload . . . at its facility in Eatontown, New Jersey." Shearer Decl. ¶¶ 18-19.

⁶On November 20, 2007, StratoComm issued a press release entitled "StratoComm Announces \$45 Million System Sale." This states that Evergreen ISP Platform, PLC "has contracted with StratoComm for the purchase of \$45,000,000 of StratoComm Transitional System telecommunications equipment and services." The press release described StratoComm as a "provider" of "telecommunications infrastructure technologies" and stated that a "\$45 million contract" was "awarded" to StratoComm by an entity in Cameroon for three TTS units and related services. However, it is undisputed that on November, 20, 2007, StratoComm had not provided telecommunications infrastructure technologies to any person or entity, and Shearer knew StratoComm did not have the funding in place to build a TTS. Thus, defendants conceded that when Shearer drafted the November 20, 2007 press release, he knew that StratoComm had not provided telecommunications infrastructure technologies to any person or entity. Moreover, StratoComm never received a monetary deposit or payment from Evergreen ISP Platform based upon the sale announced in the November 20, 2007 press release, and StratoComm never received any revenue based upon the sale referenced in the November 20, 2007 press release.

⁷The January 29, 2008 press release announced the "sale," valued at \$15 million, of "StratoComm's most recent system" and related services to StratoComm's joint venture partner in Madagascar, StratoComm Madagascar SA. The press release described StratoComm as a "provider" of telecommunications infrastructure technologies. Even assuming that StratoComm "at all times possessed its proprietary telecommunications payload" or that "it manufactured [a] proprietary telecommunications payload," there is no dispute that as of January 29, 2008, StratoComm had not provided telecommunications infrastructure technologies to any person or entity; StratoComm never received a monetary deposit or payment from StratoComm Madagascar SA based upon the sale announced in the January 29, 2008 press release; and StratoComm never received any revenue based upon the agreement referenced in the January 29, 2008 press release.

⁸The Executive Informational Overview stated that "StratoComm's aerostat is nearly 37 meters in length and 12 meters at its widest portion. It meets all U.S. Federal Aviation Administration (FAA) requirements, including the presence of an emergency flight termination system and proper lighting, and can carry a payload of up to 225 kilograms." The Executive Informational Overview further stated:

The TTS is a tethered aerostat 37 meters in length positioned 1,500 meters above the region for which it provides telecommunications. Due to its proprietary payload designed in-house by StratoComm's Development Team, the TTS can support broadband Internet, wireless voice, or broadcast services (up to 100 video channels) for roughly 500,000 customers in an 80-kilometer diameter area.

The Executive Informational Overview described the TTS as "presently available," and stated that much of the company's resources were devoted to support of its "installed TTSs." Moreover, the Executive
(continued...)

May 5, 2009 Press Release.⁹ Because these false statements were likely to influence investor decisions, that were violative of the securities law even if some investors were not duped by them. This is because the SEC is not required to prove that a victim relied upon the defendants' omission or misrepresentation in making an investment decision in an enforcement action. See *SEC v. Apuzzo*, 689 F.3d 204, 213 (2d Cir. 2012). Thus, even assuming that there exists no evidence that any of the investors were actually duped into investing, that fact is of no moment on the issue of liability.¹⁰ It should also be noted that Danzig was found to have acted as an unregistered broker in violation of Section 15(a) of the Exchange Act; and all Defendants were found to have violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities in unregistered transactions.

In addition, the SEC has demonstrated that Shearer and Danzig are recidivist

⁸(...continued)

Informational stated that, "[a]t present, the Company has sold three TTS aerostats to Cameroon [and] one to Madagascar..." The Executive Informational Overview also stated that StratoComm was "presently selling" the TTS, that TTS units "have been sold...for \$60 million to date," and that its goal was to obtain "up to an additional \$75 million in sales" by the end of 2008, which was less than four months after the Executive Informational Overview was issued.

It is undisputed that when Shearer approved the Executive Informational Overview for public distribution, he knew that (1) StratoComm had never owned an aerostat; (2) StratoComm never had the funding to purchase an aerostat or build an operational TTS; (3) StratoComm has never delivered an operational TTS to any entity; (4) StratoComm had not installed a TTS; and (5) StratoComm had not received payment in connection with the sales agreements referenced in the November 20, 2007 and January 29, 2008 press releases. Danzig reviewed the Executive Informational Overview before it was finalized.

⁹The May 5, 2009 press release was entitled "StratoComm Corporation Schedules Initial System Turn On." This stated that "a team of engineers" was departing for Cameroon, "the location for installation of StratoComm's first commercial wireless telecommunications system." It described testing of the system at the company's facilities in New Jersey and the scheduled departure of the "installation and training team." It also emphasized that testing would ensure "efficient installation and reliable operation with system turn on." While it was conceded by the SEC that the reference in the press release to "StratoComm's first commercial wireless telecommunications system" was not to a TTS, the press release did not disclose that the system installed in Cameroon was not a TTS. Further, the press release did not disclose that the system installed in Cameroon was anchored to a tower.

¹⁰Thus, even though Defendants have presented affidavits from 29 investors who claim they were not duped into investing, this does not negate liability.

violators of the securities laws. In this regard, it is undisputed that in 2001, Shearer was ordered by the SEC to cease and desist from future violations of Section 5(a) and 5(c) of the Securities Act for selling unregistered securities. See SEC Order Instituting Proceedings, Making Findings, and Imposing a Cease-and-Desist Order, Oct. 3, 2001 (SEC Ex. 1). The SEC has also demonstrated that Danzig was sanctioned by the State of Delaware in connection with unauthorized transactions in a customer account and was barred from obtaining a license to sell securities in New Jersey. See FINRA BrokerCheck Report for Craig Danzig at 6-8 (discussing the Delaware and New Jersey regulatory proceedings against Danzig) (SEC Exhibit 3). All considered, this factor weighs in favor of injunctive relief.

2. The degree of scienter involved.

Scienter is “a mental state embracing intent to deceive, manipulate, or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n. 12 (1976). The Court found that each Defendant knowingly violated, and/or aided and abetted violations of, the anti-fraud provisions of the federal securities laws. Order at 26-27 (“A reasonable fact finder could only conclude that in preparing and disseminating the press releases and Executive [Informational] Overview which contained the referenced false and misleading statements ..., Shearer engaged in knowing misconduct”); 27 (“As StratoComm’s CEO and sole director who acted within the scope of authority, Shearer’s scienter is imputed to StratoComm”); 30 (finding that Shearer aided and abetted StratoComm’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder with scienter; “Shearer knew that the press releases and the Executive Overview were materially misleading”). Further,

and contrary to Shearer's suggestion, there is no requirement that a defendant must act "intentionally" to be permanently enjoined. See, e.g., *Bass*, 2011 WL 4344001, at *4 (defendants' acting with the requisite level of scienter -- that is, knowingly in that case -- under the Securities and Exchange Acts was sufficient for permanent injunctions). This factor weighs in favor of injunctive relief.

3. Whether the infraction is an isolated occurrence.

The Court found that StratoComm and Shearer falsely portrayed StratoComm as a development-stage company that had progressed to the operational stage with a finished product and sales, when it had not. Order at 22. StratoComm had no products, no paying customers, and no revenues; its existence depended on its ability to sell securities to investors. Order at 2, 22. The Court also found that the fictitious portrayal was advanced through a series of materially false and misleading public statements (three press releases and Executive Informational Overview) over the course of almost two and half years, whereby StratoComm received approximately \$4 million from selling its penny stock to more than 100 investors. Order at 3, 15-27. Contrary to Defendant's arguments, the instant infractions were not isolated occurrences but rather appeared to be a part of a long-standing and somewhat elaborate scheme to defraud investors. Moreover, Danzig was found to have acted as an unregistered broker, and all Defendants were found to have violated the Securities Act by offering and selling securities in unregistered transactions. This factor weighs in favor of injunctive relief.

4. Whether the defendant continues to maintain that his past conduct was blameless.

Defendants argue, *inter alia*, (a) that StratoComm and Shearer's false and

misleading public statements were immaterial; (b) that Shearer, StratoComm's CEO and sole member of its Board of Directors, "at all times has operated with the success of the company in mind;" and (c) that Shearer did not have the appropriate scienter to commit any wrongdoing. The arguments are contradicted by the Court's decision in this matter.

Further, the securities laws that were violated here are intended to protect the unknowing, unsophisticated investor. A party's good faith intentions, no matter how valid, do not allow a party to run afoul of the law without repercussions. Moreover, Defendants' protestation of innocence is a factor that weighs in favor of the sought-after injunctive relief. See *SEC v. Lorin*, 76 F.3d 458, 461 (2d Cir. 1996) ("[T]he court may properly view a culpable defendant's continued protestations of innocence as an indication that injunctive relief is advisable."). This factor weighs in favor of injunctive relief.

5. Whether, because of his professional occupation, the defendant might be in a position where future violations could be anticipated.

StratoComm and Shearer do not pledge to forego future opportunities to engage in additional securities fraud violations. Rather, Shearer argues that StratoComm, which has "no products, no paying customers, and no revenues," must continue to maintain its website (<http://www.stratocomm.net>) to "secur[e] a moneyed purchaser of the telecommunications systems it has been marketing for many years." Further, and far from pledging to refrain from raising funds from investors, StratoComm and Shearer merely claim that they would obtain "competent" legal counsel if they seek investments in the future. These arguments do not militate against the issuance of an injunction against StratoComm and Shearer.

Moreover, as indicated above, the SEC has demonstrated that Shearer and Danzig are recidivist violators of the securities laws. The Court finds that this factor weighs in favor

of injunctive relief.

6. Totality of the circumstances

Based upon the totality of the circumstances, the Court finds that StratoComm, Shearer, and Danzig should be permanently enjoined from violating the federal securities laws on which they were found to be liable. *E.g., SEC v. Zwick*, 2007 WL 831812, at *19 (S.D.N.Y. Mar. 16, 2007) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972)).

b. Disgorgement and Prejudgment Interest as to All Defendants

The SEC seeks disgorgement and prejudgment interest from all three defendants. Courts have broad equity powers to order the disgorgement of "ill-gotten gains" obtained through the violation of the securities laws and, if ordered, in calculating the disgorgement amount. *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996); *SEC v. Bass*, 2012 WL 5334743, at *2 (N.D.N.Y. Oct. 26, 2012) ("*Bass II*"). Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable. *First Jersey*, 101 F.3d at 1474.

In calculating disgorgement, a "reasonable approximation of profits causally connected to the violation" is sufficient and "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose conduct created that uncertainty." *Id.* at 1475 (brackets in original); *Bass II*, 2012 WL 5334743, at *3 (same). Once the SEC has shown a reasonable approximation, the burden shifts to the defendant to demonstrate that the SEC's proffered disgorgement amount was not a reasonable approximation. *SEC v. First City Fin. Corp., Ltd.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989).

Courts have the discretion to find joint and several liability of disgorgement when two or more defendants have collaborated to violate the securities laws, particularly when a defendant is found liable as a "controlling person" of another defendant entity under Section 20(a) of the Exchange Act. See *First Jersey*, 101 F.3d at 1475 (upholding disgorgement on a joint and several basis of a firm and owner/chief executive officer where a firm received gains through its unlawful conduct and where its owner and chief executive officer has collaborated in that conduct and has profited from the violations).

Disgorgement typically includes prejudgment interest, such that wrongdoers do not profit from their illegal conduct. See *First Jersey*, 101 F.3d at 1476; *Bass II*, 2012 WL 5334743, at *3 ("Requiring payment of interest prevents a defendant from obtaining the benefit of what amounts to an interest free loan procured as a result of illegal activity.") (quoting *SEC v. Moran*, 944 F. Supp. 286, 295 (S.D.N.Y. 1996)). Prejudgment interest is computed according to the underpayment rate used by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2). See *First Jersey*, 101 F.3d at 1476.

In support of disgorgement and prejudgment interest, the SEC has offered the declaration of Brad Mroski, an Assistant Chief Account in the Division of Enforcement of the United States Securities and Exchange Commission, and a Certified Public Accountant licensed in the states of Colorado and Texas. He has been employed by the SEC for more than three years, and prior to that engaged in forensic accounting and auditing for an international accounting and consulting firm for almost 10 years. Based upon his review of the evidence in this matter (as more fully set forth in his declaration), Mroski concludes that the total amount of investor deposits into StratoComm's bank accounts for the period of

November 21, 2007 through April 30, 2010 was approximately \$4,086,245.00. It is this amount that the SEC contends should be disgorged jointly and severally by StratoComm and Shearer. Mroski concludes that prejudgment interest on the \$4,086,245.00 amount, calculated using the IRS's underpayment rate, is approximately \$882,464.68. See Declaration of Brad Mroski, ¶¶ 3, 5-6, 9-11 (discussing his review and methodology for calculating disgorgement and prejudgment interest).

Mroski also concludes that, based on his review of StratoComm's annual ledgers for 2008, 2009 and 2010 from which he was able to isolate entries representing withdrawals for Shearer's benefit, and deducting the repayment amount from the calculation of total withdrawals, that Shearer was paid \$404,746.67 from StratoComm for the period January 2, 2008 through April 24, 2010. See Declaration of Brad Mroski, ¶ 7. However, the SEC argues that StratoComm and Shearer should be held to pay the total amount of disgorgement and prejudgment interest on a joint and several basis (not that Shearer should be responsible for disgorgement in the amount of the payments he received from StratoComm¹¹) because StratoComm and Shearer (as StratoComm's "controlling person") were essentially acting as alter egos of each other, see Order at 22-23, 25-27, 29, and were sharing in the profits together. See Mroski Decl. ¶ 7 (discussing withdrawals from StratoComm's account for the benefit of Shearer).

In their oppositions, StratoComm and Shearer do not challenge Mroski's methodology for calculating disgorgement and prejudgment interest, or the application of the joint and several liability principles under the facts of this case. Instead, they argue that

¹¹As discussed more fully below, the SEC contends that Shearer's civil penalty should be equal to the \$404,746.67 that he was paid by StratoComm.

the requested amounts are “excessive” because: (1) a subset of investors submitted affidavits attesting that they were not “duped” by StratoComm and Shearer (and therefore approximately \$1.16 million, representing their investments, should not be included in the disgorgement calculation); (2) Shearer did not “loot” the company “for his own financial gain”¹²; and (3) StratoComm and Shearer are experiencing extreme financial hardships. None of these arguments are meritorious.

First, the purpose of disgorgement is not to compensate for losses but to deprive the wrongdoer of ill-gotten gain. *SEC v. Whittemore*, 659 F.3d 1, 11 n. 2 (D.C. Cir. 2011). Moreover, requiring payment of prejudgment interest prevents a defendant from obtaining the benefit of what amounts to an interest-free loan procured as a result of illegal activity. *SEC v. Moran*, 944 F. Supp. 286, 295 (S.D.N.Y. 1996). As the SEC correctly asserts, the requested remedies of disgorgement and prejudgment interest have nothing to do with whether a subset of investors were or were not “duped” by the materially false and misleading public statements by StratoComm and Shearer. As indicated above, to establish liability the SEC is not required to prove that a victim relied upon the defendants’ omission or misrepresentation in making an investment decision. *See Apuzzo*, 689 F.3d at 213.

Second, whether Shearer, in fact, “looted” StratoComm “for his own financial gain” is of no consequence in determining the amount of disgorgement and prejudgment interest to

¹²Shearer contends that the monies he received from StratoComm were an agreed pay down of funds owed to Shearer by PriorityAccess, a StratoComm shareholder and financial supporter. Declaration of Roger D. Shearer [Shearer Declaration], ¶ 6. Otherwise, Shearer asserts that funds he received from StratoComm were immediately converted into checks payable to satisfy obligations of payroll and vendor invoices of StratoComm. *Id.* ¶ 6.

award. Rather, this determination is based upon Mroski's undisputed calculations made after examining StratoComm's general ledgers and the relevant bank records which showed that, during the period of November 21, 2007 through April 30, 2010, StratoComm obtained approximately \$4,086,245.00 from investors; that Shearer (as StratoComm's CEO and sole director of its Board of Directors) paid himself approximately \$404,746.67 from StratoComm's bank account which had received investors' money; and that prejudgment interest on the \$4,086,245.00 amount is approximately \$882,464.68 for StratoComm and Shearer. See Mroski's Declaration ¶¶ 3, 5-11. The SEC does not seek disgorgement on the money paid to Shearer.

Third, StratoComm's and Shearer's plea of poverty is of no moment in the disgorgement calculation. A claim of financial hardship is not among the factors considered when evaluating whether disgorgement is appropriate. *SEC v. Universal Exp., Inc.*, 646 F. Supp. 2d 552, 565 (S.D.N.Y. 2009) (explaining that "[i]n deciding a motion for disgorgement, a court is not bound to consider a defendant's claims of financial hardship" and denying any reduction of disgorgement and prejudgment interest based upon such claims); *SEC v. Thomas James Assoc., Inc.*, 738 F. Supp. 88, 95 (W.D.N.Y. 1990) ("Nor may a securities law violator avoid or diminish his responsibility to return his ill-gotten gains by establishing that he is no longer in possession of such funds due to subsequent, unsuccessful investments or other forms of discretionary spending."). Moreover, "to withhold the remedy of disgorgement or penalty simply because a swindler claims that [he] has already spent all the loot and cannot pay would not serve the purposes of the securities laws." *Universal Express*, 646 F. Supp. 2d at 565. Indeed, even if StratoComm and Shearer no longer have

the benefit of more the than \$4 million of investors' money, the Court should not "ignore the possibility that a defendant's fortunes will improve, and that one day the SEC will be able to collect on even a severe judgment." *SEC v. Kane*, 2003 WL 1741293, at *4 (S.D.N.Y. Apr. 1, 2003). Accordingly, the Court will award the SEC the amount of disgorgement and prejudgment interest it has requested for StratoComm and Shearer, to be paid jointly and severally.

As to Danzig, the SEC argues that he knowingly committed securities fraud and other violations, including leading the illegal sale of approximately 63 million unregistered shares of StratoComm's stock to more than 100 investors, while not even registered as a broker. See Order at 29-37. The SEC asserts that, therefore, Danzig should be responsible for disgorgement of his ill-gotten gains. Using the same methodology as employed for Shearer, Mroski concludes that the payments received by Danzig (or made for Danzig's benefit) from StratoComm for the period of November 20, 2007 through April 30, 2010 was \$415,247.41. *Id.* ¶ 8. Using the payments to Danzig as a potential disgorgement amount, and applying the IRS's underpayment rate, Mroski concludes that the pre-judgment interest Danzig owes is \$73,810.64. *Id.* ¶ 11. Thus, the SEC argues, the total approximate amount to be disgorged by Danzig should be \$489,058.05. See Mroski Decl. ¶¶ 3, 5, 8-11.

The Court does not find that Danzig should be required to disgorge any money. The money that Danzig received from StratoComm came from the investor contributions to StratoComm. Because StratoComm and Shearer are required to pay disgorgement in the full amount of the investors' contribution, with interest, disgorgement by Danzig of a portion of that money would result in a double payment for the same conduct. It will not be

ordered. Danzig's involvement in the securities law violations will be addressed through other devices.

c. Penny Stock Bars as to Shearer and Danzig

The Court may enter an order prohibiting a party from permanently participating in a penny-stock offering against "any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny-stock." 15 U.S.C. § 78u(d)(6)(A). In determining whether a penny stock bar is appropriate, the Court considers: "(1) the egregiousness of the underlying securities law violation; (2) the defendant's repeat offender status; (3) the defendant's 'role' or position when he engaged in the fraud; (4) the defendant's degree of scienter; (5) the defendant's economic stake in the violation; and (6) the likelihood that misconduct will recur." *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 429-30 (S.D.N.Y. 2007); *SEC v. Elliott*, No. 09 Civ. 7594, 2011WL3586454, at *14 (S.D.N.Y. Aug. 11, 2011).

Having considered all of these factors, the Court finds that Shearer and Danzig should be barred from participating in an offering of penny stock unless they first obtain approval from the Court.

d. Officer and Director Bar as to Shearer

This Court also has broad equitable powers to permanently bar Shearer from serving as an officer and director of a public company. See *SEC v. Bankosky*, 716 F.3d 45, 47 (2d Cir. 2013). The standard for imposing such a bar essentially mirrors that for imposing a penny stock bar. See *Universal Express*, 475 F. Supp. 2d at 429.

Having considered all of the relevant factors, the Court determines that Shearer

should be prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to 12 of the Exchange Act or that is required to file reports pursuant to Section 15 (d) of the Exchange Act unless Shearer first obtains approval from the Court for such conduct.

e. Civil Penalties as to All Defendants

The SEC also requests maximum "third tier" civil penalties against each of the Defendants.

Both the [Securities Act of 1933 and the Securities Exchange Act of 1934] authorize three tiers of monetary penalties for statutory violations. See 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3). Under each statute, a first-tier penalty may be imposed for any violation; a second-tier penalty may be imposed if the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement"; a third-tier penalty may be imposed when, in addition to meeting the requirements of the second tier, the "violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons," 15 U.S.C. §§ 77t(d)(2)(A)-(C); 15 U.S.C. §§ 78u(d)(3)(B)(i)-(iii)

SEC v. Razmilovic, 738 F.3d 14, 38 (2d Cir. 2013).

Each tier provides that, for each violation, the amount of the penalty "shall not exceed the greater of " a specified monetary amount or the defendant's "gross amount of pecuniary gain . . ." *Id.* (citing 15 U.S.C. §§ 77t(d), 78u(d)(3)). The maximum statutory amounts for a natural person and for any other person, respectively, are: (1) \$5,000 and \$50,000 at the first tier, (2) \$50,000 and \$250,000 at the second tier, and (3) \$100,000 and \$500,000 at the third tier. *SEC v. GTF Enterprises, Inc.*, 2015 WL 728159, at *2 (S.D.N.Y. Feb. 19, 2015) (citing 15 U.S.C. §§ 77t(d), 78u(d)(3)).¹³

¹³The statutory maximums are adjusted for inflation. 17 C.F.R. Ch. II, Pt. 201, Subpt. E. The SEC notes that the maximum third tier penalty is the greater of (1) \$130,000 or \$150,000 per violation for a natural person or \$650,000 or \$725,000 per violation for any other person (e.g., corporate entity), 17 C.F.R. Part 201, Subpart E (§§ 201.1001-1004) (adjusting for inflation); or (2) the "gross amount of pecuniary gain" to the
(continued...)

"Beyond setting maximum penalties, the statutes leave 'the actual amount of the penalty . . . up to the discretion of the district court.'" *Razmilovic*, 738 F.3d at 38 (quoting *SEC v. Kern*, 425 F.3d 143, 153 (2d. Cir. 2005)). To inform that discretion, courts in this Circuit weigh the following so-called *Haligiannis* factors: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *SEC v. Rajaratnam*, 822 F. Supp.2d 432, 433 (S.D.N.Y. 2011)(quoting *SEC v. Haligiannis*, 470 F. Supp.2d 373, 386 (S.D.N.Y.2007)); see also *SEC v. Gupta*, 569 F. App'x 45, 48 (2d Cir. 2014) (citing *Haligiannis*); *GTF Enterprises, Inc.*, 2015 WL 728159, at *2.

With regard to civil penalties, the SEC argues:

As discussed in the Court's Order, each Defendant's misconduct was egregious and repeated, spanning over two and half years. They also violated and/or aided and abetted in the violations of the anti-fraud provisions (Section 10(b) and/or Section 17(a)(1)) with a high degree of scienter (that is, they engaged in knowing misconduct). None of them have admitted the wrongful nature of their conduct, which affected more than 100 investors for losses of more than \$4 million. Finally, as shown in the SEC's disgorgement and prejudgment calculations above, each Defendant gained substantial personal benefit from the infusion of the illegally obtained proceeds; StratoComm obtained illegal pecuniary gain of approximately \$4,889,809.77; Shearer approximately \$483,646.58; and Danzig approximately \$489,058.05. See Mroski Decl. ¶¶ 5-8, 10-11.

Accordingly, the Commission respectfully requests that each Defendant be required to pay a maximum third tier civil penalty. See, e.g., *SEC v. Provident Royalties, LLC*, Civil Action No. 3:09-CV-01238-L, 2013 WL 5314354, at *9 (N.D. Tex. Sept. 23, 2013) (holding defendants' liable and ordering a third tier civil penalty in an amount equal to the "gross amount of pecuniary gain" resulting from their violations of the

¹³(...continued)
defendant as a result of the securities law violation. 15 U.S.C. § 77t(d); 15 U.S.C. § 78u(d)(3).

law); *SEC v. Wilde*, No. SACV 11-0315 DOC (AJW), 2012 WL 6621747, at *16 (C.D. Cal. Dec. 17, 2012) (same).

SEC Mem. L. p. 9. The SEC seeks a civil penalties against StratoComm in the amount of \$4,889,809.77; against Shearer in the amount of \$483,646.58; and against Danzig in the amount of \$489,058.05. These amounts are based upon the gross amount of alleged pecuniary gain of each defendant.

In opposition, StratoComm and Shearer argue that no penalty, or at least a non-third tier penalty, should be imposed against them. In support, they argue that

third tier penalties are available only for securities violations involving fraud and a high level of scienter. Because, however, the SEC cannot demonstrate which, if any, of the sales of stock were causally related to any alleged fraud, a penalty in an amount equal to the entire investment proceeds during the relevant time period is again excessive. Instead, this amount should be reduced, at a minimum, by the investments not causally related to the alleged fraud as well as by the amount sought by the SEC for prejudgment interest. Third tier penalties also are inappropriate for the Section 5 violation because Mr. Shearer did not act recklessly when the unregistered stock was sold.

StratoComm Mem. L. pp. 1-2.

This argument is unavailing. It is true that the Securities Act and the Securities Exchange Act provide a maximum amount of penalty “for each violation.” 15 U.S.C. §§ 77t(d)(2); 78u(d)(3)(B). While these statutes do not define a “violation,” courts have determined the number of violations involved using different methods. *GTF Enterprises, Inc.*, 2015 WL 728159, at *4. Some courts “look to the number of investors defrauded or the number of fraudulent transactions to determine the number of violations.” *Id.* (citations omitted). Others “consider the number of statutes that each Defendant violated, or whether the violations were all part of a single scheme.” *Id.* (citations omitted). Here, the Court employs the second method. Although some investors may have invested in StratoComm

knowing that its public statements were false, the securities violations that the Court found were not that each individual investor was duped, but that the defendants engaged in a single scheme to dupe investors in general through the use of fraudulent statements and publications in connection with the public offering of StratoComm stock. The Court need only find one violation of the Securities law per defendant, which it has, as set forth in the Order.

Defendants also argue that third tier penalties are inappropriate because there is no proof as to which, if any, of the “transactions during the relevant time period were causally connected to the alleged misleading press relief and Executive Overview.” StratoComm Mem. L. p. 6. For the reasons just discussed, the Court need not tie any specific “transaction” to a securities law violation in order to impose civil penalties in this case.

In addition, Defendants argue that “[a]lthough this Court determined that Mr. Shearer acted knowingly in connection with the press releases and Executive Overview, . . . the money invested into StratoComm was used for research and development and to facilitate contracts for the sale of the TTS, and to pay employees.” The good-faith use of the ill-gotten gains does not negate the securities law violations. It does, however, impact the egregiousness of the defendants’ conduct under the first of the *Haligiannis* factors.

Defendants correctly argue that a finding of recklessness is necessary to justify second or third tier penalties for violations of Section 5. See *SEC v. Mattera*, 2013 WL 6485949 at *16 (S.D.N.Y. Dec. 9, 2013). However, besides a Section 5 violation by Shearer, the Court found that StratoComm, Shearer, and Danzig violated and/or aided and abetted in violating various antifraud provisions of the federal securities laws, including Section 17(a) of the Securities Act and/or Section 10(b) of the Exchange Act. See Order at

14-33. Thus, a finding of recklessness is not required to impose civil penalties under these other sections of the securities law.

Finally, Defendants assert their impaired financial worth as a mitigating factor in the imposition of civil penalties. The SEC correctly notes that the Southern District has held that, "in light of the goal of deterrence, a defendant's claims of poverty cannot defeat the imposition of a civil penalty by a court." *Kane*, 2003 WL 1741293, at *4. However, the Southern District also held: "While the court may take the defendant's current financial difficulties into account, these circumstances alone cannot negate the need for a severe civil penalty." *Id.*

In the instant case, taking into account the substantial financial disgorgement and prejudgment interest that will be imposed against StratoComm and Shearer; the uncontradicted evidence that some investors invested in StratoComm knowing that it did not have the contracts it professed it had or the capability to put into work the technology the company was based upon; the penny stock and officer and director bars imposed; and the professed and reasonably anticipated financial difficulties that will result to defendants from this litigation, the Court imposes Tier 3 civil penalties against StratoComm in the amount of \$100,000.00; against Shearer in the amount of \$50,000.00; and against Danzig in the amount of \$25,000.00.

IV. CONCLUSION

For the reasons set forth above, the SEC's Motion for Remedies [dkt. # 39] is **GRANTED in part and DENIED in part.** Therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants

StratoComm Corporation, Roger D. Shearer, and Craig Danzig, and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Decision and Order by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm, Roger D. Shearer, and Craig Danzig, and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Decision and Order by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendants StratoComm Corporation, Roger D. Shearer, and Craig Danzig and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Decision and Order by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement

has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Craig Danzig and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Decision and Order by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(a)(1)], by using the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless registered in accordance with subsection (b) of Section 15 of the Exchange Act [15 U.S.C. § 78o(b)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant Roger D. Shearer is permanently prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] unless he first obtains approval and permission from the Court.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendants Roger D. Shearer and Craig Danzig are permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock unless they first obtain approval and permission from the Court. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm Corporation and Roger D. Shearer are jointly and severally liable for disgorgement of \$4,086,245.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$882,464.68 (for a total of \$4,968,709.68). StratoComm Corporation is further liable for a civil penalty in the amount of \$100,000.00 and Roger D. Shearer is further liable for a civil penalty in the amount of \$50,000.00, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; StratoComm Corporation or Roger D. Shearer as a defendant in this action; and specifying that payment is made pursuant to this Decision and Order.

Each Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, each Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to any Defendant. The Commission shall send the funds paid pursuant to this Decision and Order to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest through any collection procedures authorized by law. Each Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Craig Danzig is liable for a civil penalty in the amount of \$25,000.00, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Craig Danzig as a defendant in this action; and specifying that payment is made pursuant to this Decision and Order.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Decision and Order to the United States Treasury.

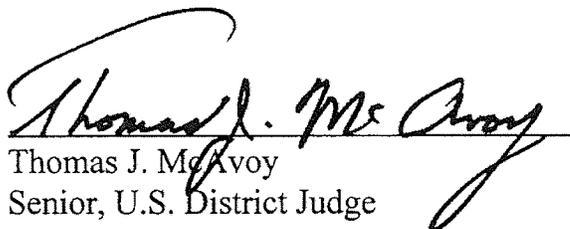
Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Decision and Order and the subsequent Judgment.

The motion is **DENIED** in all other respects.

It is **SO ORDERED**.

Dated: March 9, 2015


Thomas J. McAvoy
Senior, U.S. District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**STRATOCOMM CORPORATION,
ROGER D. SHEARER, and
CRAIG DANZIG,**

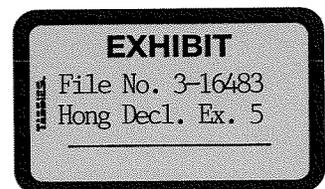
Defendants.

Case No. 1:11-CV-1188 (TJM/CFH)

**AMENDED FINAL JUDGMENT AS TO DEFENDANTS
STRATOCOMM CORPORATION, ROGER D. SHEARER, AND CRAIG DANZIG**

Pursuant to the Court’s Decision and Order, filed February 19, 2014 (Doc. # 61), granting Plaintiff Securities and Exchange Commission’s (“SEC”) motion for partial summary judgment as to liability against Defendants StratoComm Corporation, Roger D. Shearer, and Craig Danzig, and pursuant to the Court’s Decision and Order, March 9, 2015 (Doc. # 76), granting in part and denying in part Plaintiff SEC’s Motion for Remedies:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm Corporation, Roger D. Shearer, and Craig Danzig and Defendants’ agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the



mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm Corporation and Craig Danzig and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm Corporation, Roger D. Shearer, and Craig Danzig and Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendant Craig Danzig and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(a)(1)], by using the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless registered in accordance with subsection (b) of Section 15 of the Exchange Act [15 U.S.C. § 78o(b)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant Roger D. Shearer is permanently prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Roger D. Shearer and Craig Danzig are permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants StratoComm Corporation and Roger D. Shearer are jointly and severally liable for disgorgement of \$4,086,245.00, representing profits gained as a result of the conduct alleged in the Complaint,

together with prejudgment interest thereon in the amount of \$882,464.68 (for a total of \$4,968,709.68). StratoComm Corporation is further liable for a civil penalty in the amount of \$100,000.00 and Roger D. Shearer is further liable for a civil penalty in the amount of \$50,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofim.htm>. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; StratoComm Corporation or Roger D. Shearer as a defendant in this action; and specifying that payment is made pursuant to the Decision and Order, filed March 9, 2015.

Each Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, each Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to any Defendant. The Commission shall send the funds paid pursuant to the Decision and Order, filed March 9, 2015 to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest through any collection procedures authorized by law. Each Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Craig Danzig is liable for a civil penalty in the amount of \$25,000.00, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Craig Danzig as a defendant in this action; and specifying that payment is made pursuant to the Decision and Order, filed March 9, 2015.

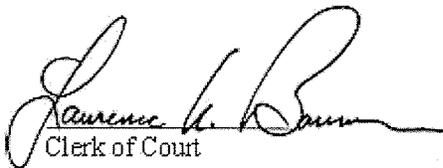
Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant

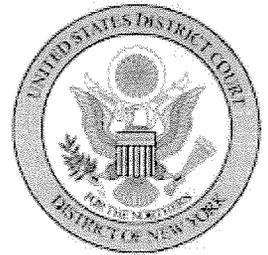
to the Decision and Order, filed March 9, 2015 to the United States Treasury.

Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of the Decision and Order, filed March 9, 2015 and the subsequent Judgment.

Dated: March 26, 2015


Clerk of Court



s/ C. M. Ligas, Deputy Clerk

Federal Rules of Appellate Procedure

Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or
- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice

of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or

(ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.